

1 SHEPPARD MULLIN RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
JACK H. RUBENS, CAL. BAR NO. 106240
3 jrubens@sheppardmullin.com
ZACHARY NORRIS, CAL. BAR NO. 268616
4 znorris@sheppardmullin.com
LAUREN K. CHANG, CAL. BAR. NO. 285958
5 lchang@sheppardmullin.com
333 South Hope Street, 43rd Floor
6 Los Angeles, California 90071-1448
Telephone: 213-620-1780
7 Facsimile: 213-620-1398

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Superior Court of California

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8 Attorneys for Petitioner
9 CITY OF DIAMOND BAR

Sherri R. Carter, Executive Officer/Clerk
By N. DiGiambattista, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

12 CITY OF DIAMOND BAR, a municipal
13 corporation,

14 Petitioner,

15 v.

16 CITY OF INDUSTRY, a municipal corporation,
acting by and through its city council,
17 commissions, committees, staff, agencies,
departments and officials; CITY OF
18 INDUSTRY CITY COUNCIL; SUCCESSOR
AGENCY TO THE INDUSTRY URBAN-
19 DEVELOPMENT AGENCY; BOARD OF
DIRECTORS OF THE SUCCESSOR
20 AGENCY TO THE INDUSTRY URBAN-
DEVELOPMENT AGENCY; OVERSIGHT
21 BOARD OF THE SUCCESSOR AGENCY TO
THE INDUSTRY URBAN-DEVELOPMENT
22 AGENCY; and DOES 1 through 50, inclusive,

23 Respondents,

24 CITY OF INDUSTRY, a municipal corporation,
acting by and through its city council,
25 commissions, committees, staff, agencies,
departments and officials; CITY OF
26 INDUSTRY CITY COUNCIL; SUCCESSOR
AGENCY TO THE INDUSTRY URBAN-
27 DEVELOPMENT AGENCY; BOARD OF
DIRECTORS OF THE SUCCESSOR
28 AGENCY TO THE INDUSTRY URBAN-

Case No. BS171295

Related Case No. BS171398 (*City of Chino
Hills v. City of Industry*)

Assigned to the Honorable Mary H. Strobel
(Department 82)

**FIRST AMENDED VERIFIED
PETITION FOR PEREMPTORY
WRIT OF MANDATE**

(Cal. Civ. Proc. Code §§ 1094.5 and 1085)

[Petition filed on November 1, 2017]

1 DEVELOPMENT AGENCY; OVERSIGHT
2 BOARD OF THE SUCCESSOR AGENCY TO
3 THE INDUSTRY URBAN-DEVELOPMENT
4 AGENCY; SAN GABRIEL VALLEY WATER
AND POWER, LLC, a California limited
liability company; and DOES 51 through 100,
inclusive,

Real Parties in Interest.

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1 In support of its First Amended Verified Petition for Peremptory Writ of
2 Mandate (the "Petition"), petitioner City of Diamond Bar ("Diamond Bar") alleges as
3 follows:

4
5 **INTRODUCTION**

6 1. This action concerns three distinct public agencies, generally
7 controlled by the same operatives, who in their zeal to develop a large solar project and
8 rake in many millions of dollars for the City of Industry ("Industry") and a bevy of hired
9 consultants, have trampled on State laws that require them to conduct environmental
10 reviews prior to approving projects, to make their decisions at public meetings with proper
11 notice, and sell property at fair market value, and that restrict the purposes for which
12 municipalities may acquire and lease land located outside of their geographic boundaries.

13 2. At the center of this action is Tres Hermanos Ranch ("Tres
14 Hermanos"), which includes approximately 2,445 acres of largely undeveloped land that
15 has historically been used for ranching, farming and cattle grazing. The Industry Urban-
16 Development Agency (the "Industry Redevelopment Agency"), which was a
17 redevelopment agency established in Industry, acquired Tres Hermanos in 1978, but the
18 property was transferred in 2012 to the Successor Agency to the Industry Urban-
19 Development Agency (the "Successor Agency") after the Industry Redevelopment
20 Agency, and all other redevelopment agencies in California, were dissolved in 2011
21 pursuant to State legislation known as the Redevelopment Dissolution Act.

22 3. The Redevelopment Dissolution Act created "successor agencies" that
23 are charged with winding down the affairs of the former redevelopment agencies,
24 including the disposal of all their real property and other assets. The actions of the
25 successor agencies are subject to review and approval by "oversight boards", established
26 by the Redevelopment Dissolution Act, to act as a fiduciaries to "taxing entities". Taxing
27 entities consist of the various local agencies that receive a pro rata share of the property
28 taxes assessed against the former redevelopment agency's properties. They include school

1 districts, fire districts, cities and counties. As part of the process of disposing of real
2 property, successor agencies are required to develop long range property management
3 plans designed to sell properties expeditiously and in a manner that maximizes their
4 value. Once such a plan is approved by the California Department of Finance ("DOF"),
5 the successor agency must dispose of real property pursuant to that plan. Acting in its
6 capacity as a fiduciary to the taxing entities, the oversight board reviews the successor
7 agency's approval of any proposed sale of real estate to ensure consistency with the long
8 range property management plan. Proceeds from the sale of the property are then
9 distributed to the taxing entities based upon their relative pro rata shares of the property
10 taxes assessed against the property.

11 4. Approximately 695 acres of Tres Hermanos are located within the
12 boundaries of Diamond Bar and the County of Los Angeles ("LA County"), while the
13 other approximately 1,750 acres are located within the boundaries of the City of Chino
14 Hills ("Chino Hills") and the County of San Bernardino ("SB County"). Therefore,
15 Diamond Bar and Chino Hills are among the "taxing entities" that are entitled to receive
16 portions the real property taxes assessed for Tres Hermanos, as well as portions of the
17 proceeds from the sale of Tres Hermanos by the Successor Agency.

18 5. In 2014, DOF approved a Long-Range Property Management Plan
19 (the "LRPMP") prepared by the Successor Agency that governs the Successor Agency's
20 disposal of the real property previously owned by the Industry Redevelopment Agency.
21 The LRPMP states that the "current estimated value" of Tres Hermanos was approximately
22 **\$85-122 million** as of April 2013.

23 6. In 2015, Industry decided that it wanted to purchase Tres Hermanos.
24 It was, of course, negotiating with itself to acquire the property because the Successor
25 Agency is governed by a Board of Directors (the "Successor Agency Board") comprised of
26 the five members of the Industry City Council (the "City Council"). Throughout most of
27 the process, Industry's "negotiators" for the sale have been Paul Philips, who is the
28 Industry City Manager, and James Casso, who is the Industry City Attorney, while the

1 Successor Agency's "negotiators" have been Paul Philips, who is also the Executive
2 Director of the Successor Agency, and James Casso, who is also the Successor Agency's
3 legal counsel.

4 7. In September 2016, the Successor Agency tried to sell Tres Hermanos
5 to Industry for only **\$41.65 million**, notwithstanding the \$85-122 million estimated value
6 in the LRPMP and that the Successor Agency had received a detailed and credible offer of
7 \$101 million from a residential developer. The \$41.65 million purchase price was based
8 on a deeply flawed appraisal, which determined that the value of Tres Hermanos was
9 \$41.65 million based on a "hypothetical condition" that the use of the property would be
10 restricted to open space. On September 8, 2016, both the City Council and the Successor
11 Agency Board approved a purchase agreement with the \$41.65 million purchase price.

12 8. However, on September 29, 2016, the Oversight Board of the
13 Successor Agency (the "Oversight Board"), which oversees the Successor Agency,
14 rejected the Successor Agency Board's approval of the \$41.65 million purchase agreement
15 and requested that the Successor Agency obtain a new appraisal based on the highest and
16 best use of Tres Hermanos, consistent with the current land use and zoning designations
17 for the property.

18 9. In December 2016, the Successor Agency obtained a second
19 appraisal, which determined that the fair market value of Tres Hermanos was
20 **\$100 million**, based on the highest and best use of limited residential development. In
21 January 2017, the City Council and the Successor Agency Board approved a revised
22 purchase agreement for the sale of Tres Hermanos with a purchase price of \$100 million.
23 However, they did so without conducting any environmental review pursuant to the
24 California Environmental Quality Act (California Public Resources Code §§ 21000
25 et seq., "CEQA"), claiming that the project was exempt from CEQA review under the
26 "common sense" exemption in Section 15061(b)(3) of the State CEQA Guidelines, which
27 only applies "where it can be seen with certainty that there is no possibility that the activity
28 in question may have a significant effect on the environment."

1 10. The Successor Agency Board's approval of the \$100 million purchase
2 agreement was scheduled for review and approval by the Oversight Board at its August 24,
3 2017 meeting. However, the Oversight Board never took action on that agreement.
4 Instead, Mr. Philips, who is also a member of the Oversight Board, made a motion,
5 following public testimony, to approve a purchase and sale agreement with a
6 \$41.65 million purchase price, subject to the Oversight Board's imposition of a restrictive
7 covenant that limited the use of Tres Hermanos to "open space, public use or preservation"
8 (the "Final Tres Hermanos PSA"). The Oversight Board narrowly approved the motion by
9 a 4-3 vote. It did so without conducting, or requiring the Successor Agency to conduct,
10 any environmental review pursuant to CEQA. The Oversight Board did not provide any
11 opportunity to the public to comment on this sudden turn of events and the public notice
12 for the hearing did not describe the \$41.65 million purchase price (or any purchase price at
13 all) or the restrictive covenant.

14 11. This was little more than a shell game by Industry, the Successor
15 Agency and the Oversight Board. The \$41.65 million appraisal assumed that Tres
16 Hermanos would remain open space in perpetuity. The restrictive covenant, however, also
17 allows "public uses." Therefore, the \$41.65 million appraisal does not support a sale that
18 allows public uses. The restrictive covenant is also illusory because, under current State
19 law, a city can only acquire real property outside its boundaries for municipal use, and
20 Industry had offered \$100 million fully cognizant of that limitation.

21 12. After the Oversight Board's surprise approval of the Final Tres
22 Hermanos PSA, with its \$41.65 million purchase price and the related restrictive covenant,
23 the Successor Agency Board and the Industry City Council approved the Final Tres
24 Hermanos PSA on September 28, 2017.

25 13. What is really going on here? The answer is that, for about two years,
26 Industry has covertly been working with a developer and large teams of consultants and
27 lawyers to develop a major solar facility on Tres Hermanos and, potentially, on adjacent
28 tracts of land that it owns. In May 2016, it purported to approve a master ground lease

1 with San Gabriel Valley Water and Power, LLC ("San Gabriel WP") for the development
2 of a **photovoltaic solar project with an aggregate of 450 megawatts of rated annual**
3 **output** on Tres Hermanos and adjacent land parcels, from which Industry would receive
4 significant financial benefit. Diamond Bar is informed and believes, and thereon alleges,
5 that (a) neither the master ground lease nor any of the four lease amendments thereto
6 (collectively, the "Master Lease") were approved by the City Council in open session at a
7 public meeting and (b) instead, all discussions and approvals, if any, regarding the Master
8 Lease occurred in closed session and without the public's knowledge. The Master Lease
9 requires Industry to reimburse San Gabriel WP for up to **\$20 million** in expenses relating
10 to the development of the solar project.

11 14. Around the time the original master ground lease was executed, San
12 Gabriel WP and Industry put their consultant/legal teams to work to develop the solar
13 project. Diamond Bar is informed and believes, and thereon alleges, that based on
14 documents Diamond Bar and Chino Hills received in response to Public Records Act
15 requests, (a) Industry has received invoices from San Gabriel WP that, at a minimum, total
16 almost **\$9 million** for work performed by its consultant/legal team from April 2016-April
17 2017 with respect to the solar project, and that those aggregate reimbursable expenses have
18 increased considerably since April 2017, and (b) Industry has paid its own consultant/legal
19 team a minimum of almost **\$4 million**. At a recent City Council meeting, Newell Ruggles,
20 one of the Industry Councilmembers, stated in frustration that Industry's total expenditures
21 were **\$20 million** and that the City Council was "being kept in the dark by city staff" and
22 "hadn't seen anything" relating to the solar project.

23 15. Industry and the Successor Agency representatives have done all they
24 possibly can to conceal the existence of the solar project and all documentation relating to
25 it. To date, notwithstanding repeated Public Records Act requests for all documents
26 relating to the solar project, neither Diamond Bar nor Chino Hills has received any of the
27 plans, studies or environmental documents for which Industry has already paid millions of
28 dollars. Industry representatives, in particular Mr. Philips and Mr. Casso, have repeatedly

1 and disingenuously stated at public meetings that, despite the execution of the Master
2 Lease and the enormous expenditures over an extended period (which they almost never
3 publicly acknowledge), Industry still has no development plan or documentation
4 whatsoever that it can share with the public, or apparently with some members of its own
5 City Council, regarding the planned solar project.

6 16. Against this covert background, Mr. Philips proposed the
7 \$41.65 million purchase price, subject to the illusory "public use" restriction, so that
8 Industry could attempt to characterize the planned solar project as a public use and reap
9 significantly greater profit. The restrictive covenant would allow Industry to artificially
10 and significantly reduce the purchase price by almost \$60 million, based on a
11 "hypothetical" **open space** use, even as it moves aggressively forward with the
12 development of the major solar facility on Tres Hermanos that might well justify a
13 purchase price in excess of \$100 million. This scheme would effectively transfer at least
14 approximately \$60 million from Diamond Bar, Chino Hills and the other taxing entities,
15 which are entitled to share the proceeds from the sale, to Industry (which is not a taxing
16 entity because Tres Hermanos is located outside of Industry's boundaries). It would also
17 significantly reduce the real property taxes that would otherwise be assessed for Tres
18 Hermanos following the sale, to the further detriment of the taxing entities. Nonetheless,
19 four members of the Oversight Board went along with it, and in so doing the Oversight
20 Board breached its statutory fiduciary responsibility to Diamond Bar and the other taxing
21 entities.

22 17. And what does Industry intend to do with its \$60 million windfall?
23 On this subject, Mr. Philips was quite candid at the Oversight Board meeting on August
24 24: "Frankly, there's more cash to put into the [solar] project." He then characterized this
25 as a primary "justification" for the \$41.65 million purchase price.

26 18. Relatedly, Diamond Bar notified the Industry City Council on
27 September 27, 2017 that it had unlawfully approved the Master Lease, in violation of the
28 Brown Act, because none of the documents comprising the Master Lease had been

1 approved by the City Council in open session at a public meeting. In response, on October
2 12, 2017, the City Council "ratified" the Master Lease.

3 19. The City Council's approval of the Master Lease and the approval by
4 the City Council, the Successor Agency Board and the Oversight Board of the Final Tres
5 Hermanos PSA violated the law in numerous respects. Those violations, as more
6 particularly pled below, include the following:

7 a. Industry and the City Council failed to carry out environmental
8 review under CEQA or certify or adopt a CEQA document with respect to the Master
9 Lease prior to the City Council's approval of the Master Lease.

10 b. The Successor Agency, the Successor Agency Board and the
11 Oversight Board failed to carry out environmental review under CEQA or certify or adopt
12 a CEQA document with respect to the Final Tres Hermanos PSA prior to the approval of
13 the Final Tres Hermanos PSA by the Oversight Board and the Successor Agency Board.

14 c. Industry and the City Council failed to carry out environmental
15 review under CEQA or certify or adopt a CEQA document with respect to the Final Tres
16 Hermanos PSA prior to the City Council's approval of the Final Tres Hermanos PSA.

17 d. Industry failed to comply with the requirements of
18 Section 65402(b) of the California Government Code, which required general plan
19 conformity review by the Diamond Bar and Chino Hills Planning Commissions prior to
20 the City Council's approval of the Final Tres Hermanos PSA.

21 e. The sale of Tres Hermanos for \$41.65 million, far below its
22 fair market value, constituted a gift of public funds because it effectively transferred at
23 least almost \$60 million in revenue from Diamond Bar, Chino Hills and the other taxing
24 entities to Industry so that Industry could use those funds for its planned solar project.

25 f. The Oversight Board violated the Brown Act because (i) the
26 public notice and agenda materials for the August 24, 2017 hearing at which the Oversight
27 Board approved the Final Tres Hermanos PSA did not provide any notice of the
28

1 \$41.65 million purchase price and the related restrictive covenant and (ii) the public had no
2 opportunity to provide written or oral comments regarding the Final Tres Hermanos PSA.

3 g. The City Council's approval of the \$100 Million Tres
4 Hermanos PSA, the Final Tres Hermanos PSA and the Master Lease violated
5 Section 37351 of the California Government Code because Industry's acquisition of Tres
6 Hermanos and its lease of the property to San Gabriel WP are intended for the
7 development and operation of a major solar facility that would generate energy far
8 exceeding Industry's needs and generate millions of dollars in revenue for San Gabriel WP,
9 a private entity, Industry (which already has general fund reserves of approximately \$623
10 million and overall reserves of approximately \$1.5 billion) and their respective consultants,
11 and therefore is not necessary or proper for municipal purposes.

12 h. The City Council's approval of the \$100 Million Tres
13 Hermanos PSA, the Final Tres Hermanos PSA and the Master Lease violated
14 Section 10004 of the California Public Utilities Code because the planned solar project
15 would produce energy far beyond the needs of Industry and its inhabitants.

16
17 **GENERAL ALLEGATIONS**

18 20. Diamond Bar is, and at all relevant times herein was, a general law
19 city duly incorporated under the laws of the State of California. Diamond Bar lies within
20 LA County, exercising its authority through its City Council, commissions, committees,
21 staff, agencies, departments and officials.

22 21. Diamond Bar is informed and believes, and thereon alleges, that
23 respondent and real party in interest Successor Agency is, and at all times relevant herein
24 was, a public body established pursuant to Section 34179 of the California Health & Safety
25 Code ("HSC") to administer the dissolution and winding down of the former Industry
26 Redevelopment Agency, including the disposal of its assets and properties.

27 22. Diamond Bar is informed and believes, and thereon alleges, that
28 respondent and real party in interest Successor Agency Board is, and at all times relevant

1 herein was, acting as the governing board for the Successor Agency to govern its affairs.
2 The Industry City Council designated itself to act as the Successor Agency Board.

3 23. Diamond Bar is informed and believes, and thereon alleges, that
4 respondent and real party in interest Oversight Board is, and at all times relevant herein
5 was, a public body established pursuant to HSC Section 34173 to oversee the Successor
6 Agency's dissolution and winding down of the former Industry Redevelopment Agency,
7 including the oversight and approval of Successor Agency's disposal of the assets and
8 properties of the former Industry Redevelopment Agency.

9 24. Diamond Bar is informed and believes, and thereon alleges, that
10 respondent and real party in interest Industry is, and at all times relevant herein was, a
11 municipal corporation duly chartered under the California Constitution and the laws of the
12 State of California. Industry lies within LA County and exercises its authority by and
13 through its City Council, commissions, committees, staff, agencies, departments and
14 officials. Diamond Bar is informed and believes, and thereon alleges, that Industry is an
15 anomaly among California cities. According to Industry's website, it has a population of
16 219 people and 67,000 jobs, and a general fund balance of approximately \$646 million.
17 By comparison, Diamond Bar, which is considered to have a healthy general fund balance
18 for a city of its size, has a population of approximately 57,000 and a general fund balance
19 of approximately \$26 million.

20 25. Diamond Bar is informed and believes, and thereon alleges, that
21 respondent and real party in interest Industry City Council is, and at all times relevant
22 herein was, the elected governing body of Industry.

23 26. Diamond Bar is informed and believes, and thereon alleges, that real
24 party in interest San Gabriel WP is a California limited liability company organized under
25 the laws of the State of California.

26 27. Diamond Bar is ignorant of the true names and capacities, whether
27 individual, corporate, associate or otherwise, of respondent, Does 1 through 50, inclusive,
28 and real party in interest Does 51 through 100, inclusive. Such fictitious respondents and

1 real parties in interest are sued pursuant to the provisions of California Code of Civil
2 Procedure Section 474. Diamond Bar is informed and believes, and thereon alleges, that
3 each fictitious respondent and real party in interest was in some way responsible for or
4 participated in or contributed to the matters and things of which Diamond Bar complains
5 herein, and in some fashion is legally responsible therefor. When the exact nature and
6 identification of such fictitious respondents and real parties in interests' responsibility for,
7 participation in and contribution to the matters herein alleged is ascertained by Diamond
8 Bar, it will seek to amend this Petition and all proceedings herein to set forth the same.

9
10 **TRES HERMANOS**

11 28. On February 3, 1978, Industry acquired Tres Hermanos for
12 \$12.1 million. The property consists of approximately 2,445 acres of largely undeveloped
13 land. In November 1978, Industry transferred ownership of Tres Hermanos to the Industry
14 Redevelopment Agency.

15 29. Approximately 695 acres of Tres Hermanos are located within the
16 boundaries of Diamond Bar and, therefore, within the boundaries of LA County, and
17 include Assessor Parcel Nos. 8701-021-271, 8701-022-270 and 8701-022-273. The other
18 approximately 1,750 acres are located within the boundaries of Chino Hills and, therefore,
19 within the boundaries of SB County, and include Assessor Parcel Nos. 1000-011-019,
20 1000-011-020, 1000-011-021, 1000-11-022, 1000-021-013, 1000-021-014, 1000-031-014
21 and 1000-031-15. The current general plan land use and zoning designations established
22 for Tres Hermanos by Diamond Bar and Chino Hills allow limited residential development
23 and open space uses.

24 30. For almost 40 years, Tres Hermanos has remained primarily open
25 space and the Industry Redevelopment Agency and its successor in interest, the Successor
26 Agency, have leased Tres Hermanos to tenants for cattle grazing, one of its historic uses.

27 31. In the 1970s and 1980s, Industry and the Industry Redevelopment
28 Agency caused the preparation of a variety of preliminary studies for the development of a

1 modest reservoir/dam or a residential community on Tres Hermanos. Later, in July 2000,
2 they began to explore a potential large-scale reservoir/dam on a larger parcel of land that
3 included Tres Hermanos and approximately 2,400 acres of the adjacent Firestone Scout
4 Reservation (the "2,400-Acre Firestone Property") that the City subsequently acquired
5 from the Boy Scouts of America, Los Angeles Area Council (the "Boy Scouts"), in June
6 2001 and still owns.

7
8 **THE SUCCESSOR AGENCY, THE LONG-RANGE PROPERTY MANAGEMENT**
9 **PLAN AND THE OVERSIGHT BOARD**

10 32. Pursuant to Assembly Bill X1 26 (as amended, the "Redevelopment
11 Dissolution Act"), which became effective in June 2011, the Industry Redevelopment
12 Agency and all other redevelopment agencies in California were dissolved. The
13 Redevelopment Dissolution Act added HSC Sections 34179-34191.6, which, among other
14 things, (a) provide for the creation of successor agencies to succeed to the authority, rights,
15 powers, duties and obligation of the former redevelopment agencies, and set forth
16 procedures, requirements and standards regarding the governance of successor agencies,
17 and (b) require the establishment of an oversight board with respect to each successor
18 agency to oversee the activities of the successor agency, and set forth procedures,
19 requirements and standards for the governance of oversight boards.

20 33. In September 2011, the Successor Agency was established as the
21 successor agency to the Industry Redevelopment Agency. In February 2012, the Industry
22 City Council, acting as the governing board for the Successor Agency, established rules
23 and regulations for the governance and operation of the Successor Agency and, pursuant to
24 that resolution, provided that the Successor Agency would be governed by a Board of
25 Directors consisting of the members of the City Council (previously defined as the
26 "Successor Agency Board").

1 34. Diamond Bar is informed and believes, and thereon alleges, that in or
2 around September 2011, the Oversight Board was established to oversee the activities of
3 the Successor Agency.

4 35. In July 2012, fee title to Tres Hermanos was transferred from the
5 Industry Redevelopment Agency to the Successor Agency, as required by the
6 Redevelopment Dissolution Act.

7 36. In May 2013, DOF granted a "finding of completion" for the
8 Successor Agency in accordance with HSC Section 34179.7.

9 37. In order to dispose of the real estate assets of the former Industry
10 Redevelopment Agency, the Successor Agency was required to prepare a long-range
11 property management plan, for approval by the Oversight Board and DOF, pursuant to
12 HSC Section 34191.5. That plan was required to include an estimate of the current value
13 of each parcel, including, if available, appraisal information.

14 38. On October 8, 2013, the Oversight Board approved the Long-Range
15 Property Management Plan (previously defined as the "LRPMP") prepared by the
16 Successor Agency. In the LRPMP, Tres Hermanos is identified as "Property 68." The
17 LRPMP includes the following information and statements relating to Tres Hermanos:

18 a. The "current estimated value" of Tres Hermanos as of April
19 2013 was approximately \$85-122 million, based on a "preliminary by Keyser Marston," an
20 economic consulting firm.

21 b. Tres Hermanos is one of the "properties to be marketed
22 through direct contact with interested parties and through the use of brokers. Proposals
23 would be evaluated based upon acceptable development plans."

24 c. As one of the properties made available for sale, Tres
25 Hermanos

26 would have to meet **the basic criteria of agreement to pay a**
27 **reasonable price based on a current appraisal and submission of**
28 **a Development Plan and Schedule acceptable to the City. The**
properties would be distributed to brokers and interested parties.

1 Competing proposals would be evaluated based upon the following
2 criteria to determine which prospective buyer to work with on
3 finalizing a project to forward to the Successor Agency and
4 Oversight Board for approval.

- 5 – Agreement to pay a reasonable price based upon a current
6 appraisal
- 7 – A development Plan and schedule through construction acceptable
8 to the City
- 9 – An estimate of the assessed value of the project
- 10 – Identification of the end user, the job creation and if the user is a
11 local company
- 12 – Identification of the type of intended tenants if the project is
13 speculative. (Emphasis added.)

14 d. Successor Agency "staff recommends the property be offered
15 for sale to the City and if the City has no interest in acquiring the property would be made
16 generally available for sale."

17 39. The Successor Agency submitted that LRPMP to DOF for approval.
18 However, DOF required revisions to the LRPMP. On February 6, 2014, the Oversight
19 Board approved a revised version of the LRPMP prepared by the Successor Agency.
20 However, none of those revisions related to Tres Hermanos.

21 40. In a February 21, 2014 letter (the "2/21/14 DOF Approval Letter")
22 from Justyn Howard of DOF to Kevin Radecki, then the Industry City Manager, DOF
23 approved the revised LRPMP. The letter stated that the LRPMP governs the disposition of
24 all real property assets of the Industry Redevelopment Agency. It further stated that "[a]ny
25 subsequent [Oversight Board] actions addressing the Agency's implementation of the
26 approved LRPMP should be submitted to [DOF] for approval."

27 41. On August 27, 2014, the Oversight Board approved a further revised
28 version of the LRPMP prepared by the Successor Agency, but none of the revisions related
to Tres Hermanos.

42. In a November 12, 2014 letter from Mr. Howard of DOF to Kevin
Radecki, DOF approved the further revised LRPMP.

1 **THE POTENTIAL RESIDENTIAL DEVELOPMENT OF TRES HERMANOS**

2 43. In late 2014, the Successor Agency began to receive expressions of
3 interest and offers to purchase Tres Hermanos for residential development. In February
4 2015, Successor Agency staff recommended that the Successor Agency retain a broker to
5 assist in the sale of Tres Hermanos. In a May 5, 2015 memorandum from Kevin Radecki,
6 who also then served as the Executive Director of the Successor Agency, to the Oversight
7 Board, he recommended that the Oversight Board approve The Hoffman Company
8 ("Hoffman") as the Successor Agency's broker. This recommendation followed Hoffman's
9 submittal of a proposal letter, dated April 6, 2015, in which it stated that the "as-is" sale of
10 Tres Hermanos would be in the \$100 million plus range, while the sales price if the
11 property was entitled for residential development would be in the \$250 to \$400 million
12 range "or more depending on site constraints" On June 2, 2015, the Oversight Board
13 approved the retention of Hoffman as the Successor Agency's exclusive broker for the sale
14 of Tres Hermanos. Notwithstanding this Oversight Board approval and the Successor
15 Agency's delivery of the brokerage agreement to DOF, the Successor Agency never
16 executed it and, at least until June 7, 2016, did not explain to the Oversight Board why it
17 failed to do so.

18 44. In an April 27, 2015 letter from broker Cushman & Wakefield
19 ("Cushman") to Tim Spohn, then Chairman of the Successor Agency Board, Cushman
20 presented an offer from GH America Investments Group, Inc. ("GH America") to purchase
21 Tres Hermanos within 90 days for the greater of \$101 million or the fair market value of
22 the property, as established by an appraisal. It also provided proof of available funds.

23 45. However, GH America and its representatives had great difficulty
24 getting the attention of the Successor Agency and the Oversight Board, even as it
25 sweetened its offer. On May 27, 2015, it offered to triple its initial deposit from
26 \$1,010,000 to \$3,010,000. In a June 11, 2015 letter from Cushman to Mark Radecki, the
27 Mayor of Industry and the new Chairman of the Successor Agency Board, Cushman
28 restated GH America's \$101 million offer and related terms. Cushman restated the offer

1 for a third time in a July 8, 2015 letter to Paul Philips, the new Industry City Manager. GH
2 America's attorney, John Gordon, requested in an August 5, 2015 email to Diane
3 Schlichting, the Executive Assistant to the Industry City Manager (and also the Secretary
4 of the Oversight Board), and in an attached letter of the same date to Mr. Philips, that GH
5 America's offer be agendized for the August 27, 2015 Successor Agency Board meeting
6 and the September 1, 2015 Oversight Board meeting. It was not. Instead, GH America
7 was advised to speak for three minutes during the public comment periods.

8 46. That is what GH America was forced to do. First, on August 27,
9 2015, Brent Little, a representative of South Coast Communities, GH America's residential
10 development partner, conveyed GH America's offer during the public comment portion of
11 a Successor Agency Board meeting.

12 47. Then, Mr. Gordon spoke at the October 1, 2015 Oversight Board
13 meeting and advised that GH America had not received a response to its offer for over four
14 months, but that his client was ready, willing and able to purchase Tres Hermanos. James
15 Casso, the legal counsel for the Successor Agency (and also the Industry City Attorney),
16 indicated that he and Mr. Philips (who was by then both Industry City Manager and a
17 member of the Oversight Board) had been directed by the City Council to "look at
18 different options with regard to Tres Hermanos," and that they hoped to reach a conclusion
19 within 45-60 days. Santos Kreimann, the Chairman of the Oversight Board, requested that
20 the City and the Successor Agency at least acknowledge receipt of GH America's offer,
21 which Mr. Casso said they would do. However, in a subsequent October 22, 2015 email,
22 Mr. Gordon advised Ms. Schlichting that GH America had still not received any such
23 acknowledgment. GH did not receive that acknowledgment until January 14, 2016.

24
25 **INDUSTRY DECIDES IT WANTS TO PURCHASE TRES HERMANOS**

26 48. Meanwhile, as Mr. Casso stated on October 1, 2015, the Successor
27 Agency and Industry were indeed discussing their options regarding the sale of Tres
28 Hermanos, but they were doing so behind closed doors. Item 11.1 on the Agenda for the

1 September 24, 2015 Industry City Council meeting was a "closed session" discussion,
2 titled "Conference with real estate negotiators pursuant to Government Code Section
3 54956.8," ostensibly regarding the sale of Tres Hermanos. The Agenda Item only
4 referenced the Assessor Parcel Numbers for the property, with no reference to "Tres
5 Hermanos," and therefore effectively concealed from the public that the acquisition of Tres
6 Hermanos was the subject of the private discussion. The meeting minutes for the
7 September 24 meeting did not include any discussion of Agenda Item 11.1. A few days
8 prior to that meeting, on September 21, Oversight Board Chairman Kreimann emailed Ms.
9 Schlichting regarding his understanding that Item 11.1 related to Tres Hermanos and
10 requested notification of any action items reported out of the closed session discussion.

11 49. A few days after that City Council meeting, on September 30,
12 Ms. Schlichting emailed John Laurain to "let me know the timing and cost to prepare an
13 appraisal for" Tres Hermanos. She also wanted to know the status of an appraisal that Mr.
14 Laurain was already preparing for Industry with respect to the approximate 800 acres of
15 the adjacent Firestone Scout Reservation (the "800-Acre Firestone Property") that was then
16 still owned by the Boy Scouts. On October 5, Mr. Laurain submitted a written proposal to
17 the Successor Agency to prepare an appraisal for Tres Hermanos. The proposal states in
18 part that "we will need to review any available studies pertaining to the subject site, in
19 order to determine if the highest and best use of the site is as existing open space, and/or if
20 there are any other viable private uses of the subject property" On October 22, 2015,
21 Mr. Philips authorized the preparation of the appraisal.

22 50. Diamond Bar is informed and believes, and thereon alleges, that on
23 October 8, 2015, the City Council approved a contract with Cordoba Corporation to
24 provide unspecified real estate advisory services relating in part to the development of Tres
25 Hermanos.

26 51. Finally, at the Oversight Board meeting on January 27, 2016,
27 Mr. Casso, the Industry City Attorney and the Successor Agency's counsel, publicly
28 disclosed to the Oversight Board that the City Council had directed him and Mr. Philips to

1 begin the process for Industry to acquire Tres Hermanos and other Successor Agency
2 properties that were not currently in escrow or for which no agreement had been entered
3 into with a developer. Chairman Kreimann "asked that Jim Rabe of Keyser Marston
4 continue to be used as a third-party financial advisor to confirm that all transactions are at
5 fair market value."

6 52. A few days later, on February 2, 2016, Mr. Laurain delivered to Mr.
7 Casso an Appraisal Report for Tres Hermanos (the "Laurain Appraisal"). Contrary to
8 appraisal practice, the Laurain Appraisal did not determine the fair market value of the
9 property based on its highest and best use. Instead, the appraisal was based on a
10 "hypothetical condition" that the appraisal acknowledged was "contrary to known fact."
11 The hypothetical condition stated in the Laurain Appraisal was as follows:

12
13 While the subject parcels are zoned for agricultural use or low density
14 single-family residential use, per the City of industry, it is understood
15 that the subject property will be encumbered with the covenant that
16 will restrict the use of the subject land as **open space, public use** or
17 preservation use. Said covenant will "run with the land," thereby
making the subject property an effective open space land parcel. The
subject property, therefore, has been appraised as open space land
(emphasis added).

18 53. Based on that hypothetical condition, the Laurain Appraisal
19 determined that the value of Tres Hermanos as open space was \$41.65 million. The
20 appraisal did not determine the value of the property based on any other "public use,"
21 notwithstanding that the hypothetical condition would allow other public uses.

22 54. On February 23, 2016, shortly after the Successor Agency received
23 the Laurain Appraisal, the Successor Agency Board met in closed session to discuss Tres
24 Hermanos pursuant to Agenda Item 6.5, which stated "Conference with real property
25 negotiators pursuant to Government Code Section 54956.8." The minutes for this meeting
26 state that, with respect to Item 6.5, "the Board took no reportable action."

27 55. At the March 11, 2016 Oversight Board meeting, Mr. Gordon, the
28 attorney for GH America, again spoke during the public comment period regarding his

1 client's offer to purchase Tres Hermanos for \$101 million. He was asked to provide
2 documentation to the Oversight Board relating to that offer.

3
4 **THE MASTER LEASE AND INDUSTRY'S COVERT PLAN TO DEVELOP**
5 **A MAJOR SOLAR PROJECT ON TRES HERMANOS**

6 56. Diamond Bar is informed and believes, and thereon alleges, that prior
7 to May 17, 2016, Industry was negotiating the terms of a master ground lease (the
8 "Original Master Lease") with San Gabriel WP, but that neither the existence nor
9 substance of those negotiations was disclosed to the public at any meeting of the Industry
10 City Council or in any agenda or minutes for any such meeting.

11 57. On May 9, 2016, San Gabriel WP executed the Original Master
12 Lease, as tenant, and on May 17, 2016, Industry executed the Original Master Lease, as
13 landlord. Diamond Bar is informed and believes, and thereon alleges, that (a) Industry did
14 not provide any public notice of the City Council's intention to approve the Original
15 Master Lease, (b) the public had no opportunity to address the City Council prior to its
16 approval of the Original Master Lease, (c) the City Council did not approve the Original
17 Master Lease in open session at a public meeting and (d) Industry did not publicly disclose
18 the existence of the Original Master Lease for approximately one year after it was
19 approved, and then only in response to Diamond Bar's Brown Act demand letter and
20 Chino Hills' Public Records Act requests.

21 58. Pursuant to the Original Master Lease, Industry purported to lease
22 three parcels of land with an aggregate size of approximately 5,500 acres, including (a) the
23 2,400-Acre Firestone Property, which it already owned, (b) Tres Hermanos, which it did
24 not own and which includes approximately 2,445 acres of land, and (c) the 800-Acre
25 Firestone Property, which it did not own at time (the "Total Site"). Recital A states that
26 the legal description of the Total Site is attached as Exhibit "A", but Diamond Bar is
27 informed and believes, and thereon alleges, that the legal description was omitted from the
28 executed Original Master Lease.

1 59. The Original Master Lease includes the following provisions:

2 a. Sections 2.1 and 2.2 provide that the term is 25 years and San

3 Gabriel WP has the right to sublease portions of the Total Site to subtenants for terms of

4 up to 65 years. Section 3.1 provides that the annual rent is \$1.00.

5 b. Section 2.3 provides that Industry has the right to terminate the

6 Master Lease if San Gabriel WP has not:

7 i. submitted a request for an initial study and notice of

8 preparation under CEQA for a **photovoltaic solar project with an aggregate of 450**

9 **megawatts of rated annual output** (the "Minimum Solar Project") by November 17,

10 2016.

11 ii. submitted to the (unspecified) lead agency any other

12 studies required under CEQA within six months after a request by the lead agency (if an

13 environmental impact report ("EIR") is not required).

14 iii. submitted to the lead agency a draft EIR for the

15 Minimum Solar Project by May 17, 2018 (if an EIR is required) or by May 17, 2019 if the

16 lead agency does not allow San Gabriel WP to prepare the draft EIR.

17 iv. received certification of the EIR or other CEQA

18 document within one year after the applicable document is completed, with extensions in

19 the event of a legal challenge.

20 v. commenced physical construction of a project within

21 one year after the lead agency certifies the EIR or other CEQA document and the

22 challenge period has expired without a challenge.

23 vi. generated and paid to Industry net earnings of at least

24 (A) \$2 million per year within three years after the commencement of construction or

25 (B) \$4 million per year within 10 years after the commencement of construction, provided

26 that Industry's right to terminate the Master Lease expires upon completion of **one or**

27 **more photovoltaic projects that produce an aggregate of at least 50 megawatts per**

28 **year.**

1 c. Article XXI provides that the parties agree to execute a
2 memorandum of the Original Master Lease that would be recorded against the Total Site at
3 San Gabriel WP's election. Diamond Bar is informed and believes, and thereon, alleges,
4 that the memorandum was never recorded.

5 d. Section 24.2 provides that, with respect to all **photovoltaic**
6 **solar projects** proposed for a portion of the Total Site, San Gabriel WP will submit a
7 "request for Industry to participate therein and contribute financially thereto" and describes
8 the materials and information that must be submitted to Industry for its review.

9 e. Section 24.3 provides that Industry may approve or disapprove
10 any such request in its sole discretion. If Industry approves a request, it must (i) contribute
11 50% of the required capital expenditures (net of indebtedness), (ii) construct and pay for
12 required infrastructure and (iii) pay for 50% of any construction overruns (the "Industry
13 Contribution"). In return, Industry will receive the greater of (iv) the fair market rental
14 value of the applicable portion of the Total Site plus 12% of the net operating income for
15 the project, (v) 6% annual return on the Industry Contribution and (vi) 50% of (A) the net
16 operating income for the project plus (B) any net extraordinary gains from the sale or
17 refinancing of the solar project.

18 f. Section 25.1 provides that Industry will reimburse San Gabriel
19 WP for its **pre-development costs for solar projects** in the maximum aggregate amount
20 of \$5 million.

21 60. Diamond Bar is informed and believes, and thereon alleges, that
22 commencing in or around April 2016, both Industry and San Gabriel WP began to
23 assemble and put to work extensive teams of consultants and attorneys to design, engineer,
24 prepare studies, plans and project documents, conduct environmental review and provide
25 legal advice with regard to the contemplated solar projects.

1 61. Industry and San Gabriel WP subsequently entered into a First
2 Amendment to Master Ground Lease (the "First Amendment") dated as of November 15,
3 2016. The First Amendment includes the following provisions:

4 a. Recital A states that Industry had acquired the 800-Acre
5 Firestone Property.

6 b. Section 2.3 was amended to (i) extend the time for San Gabriel
7 WP to submit an initial study/notice of preparation under CEQA for the Minimum Solar
8 Project to June 30, 2017 and (ii) extend the time to submit a draft EIR to November 30,
9 2018 or, if the lead agency does not allow San Gabriel WP to prepare the draft EIR, to
10 November 30, 2019.

11 62. Industry and San Gabriel WP subsequently entered into a Second
12 Amendment to Master Ground Lease (the "Second Amendment") dated as of April 13,
13 2017. The Second Amendment includes the following provisions:

14 a. A new Section 2.4 claims, almost a year after the execution of
15 the Original Master Lease, that "[t]he approval of this Lease is not intended to be a 'project'
16 because it does not authorize any physical change in the environment" and that "Landlord
17 will not issue any approval or entitlement to Tenant to proceed with any project on all or
18 any portion of the Total Site unless and until compliance with CEQA is completed"

19 b. Section 25.1 was amended to more than double Industry's
20 reimbursement obligation for San Gabriel WP's pre-development costs for **solar projects**
21 to the maximum aggregate amount of \$11.5 million.

22 63. Industry and San Gabriel WP subsequently entered into a Third
23 Amendment to Master Ground Lease (the "Third Amendment") dated as of May 23, 2017.

24 64. Industry and San Gabriel WP subsequently entered into a Fourth
25 Amendment to Master Ground Lease (the "Fourth Amendment") dated as of June 30,
26 2017.

1 65. The Fourth Amendment includes the following provisions:

2 a. Section 2.3 was further amended to (i) extend the time for San
3 Gabriel WP to submit an initial study/notice of preparation under CEQA for the Minimum
4 Solar Project to June 30, 2018 and (ii) extend the time to submit a draft EIR to November
5 30, 2019 or, if the lead agency does not allow San Gabriel WP to prepare the draft EIR, to
6 November 30, 2020.

7 b. Section 25.1 was further amended to almost double Industry's
8 reimbursement obligation for San Gabriel WP's pre-development costs for **solar projects**
9 to the maximum aggregate amount of \$20 million.

10 66. Diamond Bar is informed and believes, and thereon alleges, that (a)
11 Industry did not provide any public notice of the City Council's intention to approve the
12 First Amendment, the Second Amendment, the Third Amendment or the Fourth
13 Amendment (collectively, the "Master Lease Amendments"), (b) the public had no
14 opportunity to address the City Council prior to its approval of any of the Master Lease
15 Amendments, (c) the City Council did not approve any of the Master Lease Amendments
16 in open session at a public meeting, (d) Industry failed to provide copies of the Master
17 Lease Amendments to Diamond Bar and Chino Hills in response to Public Records Act
18 requests, the first of which was sent on or around February 9, 2017 and required that they
19 be disclosed, (e) the first notice that either Diamond Bar or Chino Hills received of any of
20 the Master Lease Amendments was when invoices were produced on or about September
21 2, 2017 in response to an August 8, 2017 Chino Hills's Public Records Act request that
22 made reference to the First Amendment and Second Amendment, after which Chino Hills
23 delivered a Public Records Act request to Industry on September 25, 2017 requesting a
24 copy of the First and Second Amendments and any other amendments to the Original
25 Master Lease, and (f) Industry did not publicly disclose copies of any of the Master Lease
26 Amendments until on or about October 10, 2017, when the Industry City Council posted
27 on its website all four of the Master Lease Amendments in the agenda packet for the
28 proposed ratification of the Master Lease at its October 12, 2017 meeting.

1 67. Shortly after the execution of the Original Master Lease, Mr. Gordon
2 spoke during the public comment period at the June 7, 2016 Oversight Board meeting. He
3 reiterated GH America's offer to purchase Tres Hermanos. Mr. Little of South Coast
4 Communities then discussed the benefits of the contemplated residential development.
5 Mr. Gordon requested that the Oversight Board adopt a resolution to enter into a purchase
6 and sale agreement with GH America on the terms proposed by GH America. Chairman
7 Kreimann responded that the Oversight Board could not do that because no such
8 agreement had been negotiated with the Successor Agency. Sean Varner, the Oversight
9 Board's counsel, concurred. A discussion then ensued regarding the City's interest in
10 acquiring Tres Hermanos. Mr. Casso, the Industry City Attorney and Successor Agency
11 counsel, responded that he would advise the City Council of the Oversight Board's desire
12 to know whether Industry wanted to purchase Tres Hermanos and would report back on
13 August 31. Mr. Philips, Industry's City Manager and one of the Oversight Board
14 members, stated he would go back to the City Council and Successor Agency for direction,
15 but claimed that Industry had the right to purchase Tres Hermanos over any other bid,
16 apparently regardless of the purchase price offered by Industry. Diamond Bar is informed
17 and believes, and thereon alleges that, despite the fact the Original Master Lease had been
18 executed just three weeks earlier, neither Mr. Casso nor Mr. Philips disclosed (a) the
19 existence of the Original Master Lease to the Oversight Board or (b) that Industry had
20 already committed to allow the development of solar projects on Tres Hermanos after it
21 acquired the property.

22 68. About a month later, the City Council again met in closed session at
23 its August 11, 2016 meeting to discuss Tres Hermanos pursuant to Agenda Item 10.2,
24 which was titled "Conference with real property negotiators pursuant to Government Code
25 Section 54956.8." It stated that the "City Negotiators" were Mr. Philips, the City Manager,
26 and Mr. Casso, the City Attorney, and that the "Negotiating Parties" for the seller were Mr.
27 Philips, the Executive Director of the Successor Agency, and Mr. Casso, the Successor
28

1 Agency's counsel. In other words, Mr. Philips and Mr. Casso represented both the buyer
2 and the seller.

3
4 **INDUSTRY'S FIRST ATTEMPT TO PURCHASE TRES HERMANOS**
5 **AT AN EXTREMELY LOW PRICE AND WITHOUT CEQA REVIEW**

6 69. At its September 8, 2016 meeting, the Industry City Council, under
7 Agenda Item 7.2, considered the approval of a purchase and sale agreement (the "Tres
8 Hermanos PSA"), pursuant to which Industry would purchase Tres Hermanos from the
9 Successor Agency for an unspecified purpose. The stated purchase price was \$41.65
10 million, consistent with the Laurain Appraisal and its hypothetical limitation to open space
11 use. However, the required form of grant deed attached as Exhibit C to the Tres Hermanos
12 PSA did not include any restriction regarding the permitted uses on the property.

13 70. Attached to the Agenda was a September 1, 2016 memorandum from
14 Mr. Casso, as City Attorney, in which he stated that (a) the Redevelopment Dissolution
15 Act required the Successor Agency to dispose of its property "in a manner that maximizes
16 value," (b) "[t]he City will purchase the Property from the Agency for the appraised value
17 as open space of \$41,650,000" and (c) Industry "proposes to use the Property for open
18 space, public facility use or preservation use" Mr. Casso did not disclose the
19 existence of the Original Master Lease, which had been executed more than three months
20 earlier.

21 71. Also attached to the Agenda was proposed Resolution No. CC 2016-
22 62 (the "9/8/16 City Council PSA Resolution") to approve the acquisition of Tres
23 Hermanos and make the requisite CEQA findings. That resolution stated:

24 a. Pursuant to the LRPMP, the Successor Agency "desires to sell
25 the Property at its highest and best use, maximizing its value"

26 b. "The purchase price is \$41,560,000, which represents an
27 amount equal to or greater than the current fair market value of the Property, as determined
28 by" the Laurain Appraisal.

1 c. Industry's purchase of Tres Hermanos was exempt from
2 environmental review under CEQA pursuant to the "common sense" exemption in Section
3 15061(b)(3) of the State CEQA Guidelines, which applies "where it can be seen with
4 certainty that there is no possibility that the activity in question may have a significant
5 effect on the environment." The primary reasons for employing that exemption were that
6 "[t]he sale of the property does not involve any land use entitlements that will allow for
7 development on the property" and "[a]ny future development at the property will be
8 subject to additional environmental review and independent analysis as required by
9 CEQA."

10 72. These statements were inaccurate and extremely misleading because
11 (a) the Laurain Appraisal did not determine that its valuation of \$41.65 million reflected
12 the highest and best use of Tres Hermanos, but rather was based on a "hypothetical
13 condition," which was "contrary to known facts," that Tres Hermanos would be restricted
14 to open space in perpetuity, which would not have allowed the development of the major
15 solar facilities contemplated in the Original Master Lease or any other development, and
16 therefore resulted in the lowest possible appraised valuation of the property, (b) the \$41.65
17 million purchase price therefore would not "maximize" the value of Tres Hermanos, which
18 the LRPMP states had a fair market value of approximately \$85-122 million in April 2103
19 and for which GH America repeatedly and credibly offered the sum of \$101 million, (c)
20 the 9/8/16 City Council PSA Resolution relied on the open space assumption in the
21 Laurain Appraisal, which was false because Industry had already committed to allow the
22 development of solar facilities on Tres Hermanos under the Original Master Lease for its
23 financial benefit, and (d) the resolution did not disclose that Industry had committed to
24 lease Tres Hermanos for the development of a major solar facility.

25 73. Diamond Bar is informed and believes, and thereon alleges, that the
26 Industry City Council unanimously adopted the 9/8/16 City Council PSA Resolution.

27 74. At its September 8, 2016 meeting, which immediately preceded the
28 City Council meeting, the Successor Agency Board (the members of which are the

1 Industry City Councilmembers), under Agenda Item 5.3, considered the approval of the
2 Tres Hermanos PSA.

3 75. Included in the Agenda package was a September 8, 2016
4 memorandum from Mr. Casso, as Successor Agency counsel, in which he stated that (a)
5 the Redevelopment Dissolution Act required the Successor Agency to dispose of its
6 property "in a manner that maximizes value," (b) "[t]he City will purchase the Property
7 from the Agency for the appraised value as open space of \$41,650,000," (c) Industry
8 "proposes to use the Property for open space, public facility use or preservation use" and
9 (d) the "proposed purchase/sale . . . awaits Oversight Board and Department of Finance
10 approval, in compliance with California law."

11 76. Also attached to the Agenda was proposed Resolution No. SA 2016-
12 15 (the "9/8/16 Successor Agency PSA Resolution") to approve the sale of Tres Hermanos
13 and make the requisite CEQA findings. That resolution includes all of the statements
14 described in paragraph 71, above, which statements were inaccurate and extremely
15 misleading for the reasons set forth in paragraph 72, above.

16 77. Diamond Bar is informed and believes, and thereon alleges, that the
17 Successor Agency Board unanimously adopted the 9/8/16 Successor Agency PSA
18 Resolution.

19 78. Shortly after the City Council and Successor Agency Board took these
20 actions, LA County objected to the proposed sale on multiple grounds. In a September 29,
21 2016 letter from David Howard, Assistant Chief Executive Officer for LA County, to the
22 Oversight Board, he requested that the Oversight Board reject the Successor Agency's
23 approval of the sale, and undertake an independent appraisal of Tres Hermanos, for the
24 following reasons:

25 a. The LRPMP lists the current value of the property at \$85-122
26 million and GH America offered \$101 million for the property, an offer that apparently
27 was never forwarded to the Oversight Board. Therefore, the proposed \$41.65 million
28

1 purchase price would not maximize the value of the property, which the Successor Agency
2 holds in trust on behalf of all of the taxing entities.

3 b. The City's bid of \$41.65 million was based on the Laurain
4 Appraisal, which was flawed because it was based on a hypothetical assumption that Tres
5 Hermanos was encumbered with a covenant that restricts its use to open space, when in
6 reality no such covenant existed.

7
8 **THE OVERSIGHT BOARD REJECTS THE \$41.65 MILLION SALE**

9 79. Diamond Bar is informed and believes, and thereon alleges, that, at its
10 meeting on September 29, 2016, the Oversight Board, by a 5-2 vote, rejected the \$41.65
11 million purchase price and requested that the Successor Agency obtain a new appraisal for
12 Tres Hermanos that did not include a hypothetical restriction on the use of the land and
13 instead was based on the current land use and zoning designations for the property in the
14 Diamond Bar and Chino Hills general plans and zoning ordinances.

15 80. Diamond Bar is informed and believes, and thereon alleges, that at no
16 time prior to September 29, 2016 were the members of the Oversight Board made aware of
17 Industry's intent to develop a major solar project on Tres Hermanos, except for (a) Paul
18 Philips, who was, and is, the Industry City Manager, the Executive Director of the
19 Successor Agency and the real property negotiator for the purchase and sale of Tres
20 Hermanos for both Industry and the Successor Agency, and (ii) Esteban Torres, a former
21 Congressman who was the City of Industry's other representative on the Board.
22 Mr. Philips had a fiduciary duty to inform the other Oversight Board members of this
23 intended use.

24 81. Thereafter, the Successor Agency retained Larry Heglar to prepare a
25 second appraisal for Tres Hermanos (the "Heglar Appraisal"), which he delivered to Mr.
26 Casso on December 7, 2016. Unlike the Laurain Appraisal, the Heglar Appraisal did not
27 include any hypothetical conditions and determined that the fair market value of the
28 property in its "as-is" condition was \$100 million as of November 7, 2016, based on its

1 highest and best use of limited residential development. This amount roughly matched GH
2 America's \$101 million offer and matched Hoffman's as-is estimated value of at least \$100
3 million.

4 82. On December 22, 2016, the Successor Agency Board again met in
5 closed session to discuss Tres Hermanos pursuant to Agenda Item 11.1, which is titled
6 "Conference with real property negotiators pursuant to Government Code Section
7 54956.8." It stated that the "City Negotiators" were Mr. Philips, City Manager, and Mr.
8 Casso, City Attorney, and that the "Negotiating Parties" for the seller were Mr. Philips,
9 Executive Director of the Successor Agency, and Mr. Casso, Successor Agency Legal
10 Counsel.

11 83. On or about January 6, 2017, Terracon Consultants, Inc. submitted a
12 proposal to Blue Oak Energy to provide geotechnical services "for the proposed solar farm
13 known as the Tres Hermanos Solar Project" (emphasis added). It set forth specific project
14 details, stating that (a) the proposed solar array fields would occupy an area of
15 approximately 900 acres, (b) the project includes two substations that would be connected
16 by transmission lines approximately 2.5 miles in length, (c) the project includes multiple
17 basins along the base of the canyon (south of Grand Avenue) to retain stormwater runoff,
18 (d) portions of the project site (primarily between the valleys) would be located in
19 liquefaction hazard potential zones, and (e) multiple slopes within the project site are
20 mapped for earthquake-induced landslide hazards. Terracon's proposed compensation was
21 \$99,000.

22 84. On January 12, 2017, the Industry City Council again met in closed
23 session to discuss Tres Hermanos pursuant to Agenda Item 11.4, titled "Conference with
24 real property negotiators pursuant to Government Code Section 54956.8." It stated that the
25 "City Negotiators" were Mr. Philips, City Manager, and Mr. Casso, City Attorney, and that
26 the "Negotiating Parties" for the seller were Mr. Philips, Executive Director of the
27 Successor Agency, and Mr. Casso, Successor Agency Legal Counsel.

1 **THE INDUSTRY CITY COUNCIL AND SUCCESSOR AGENCY**

2 **BOARD APPROVE A \$100 MILLION SALE**

3 85. As Industry's predevelopment work continued with respect to the
4 proposed solar development, Industry and the Successor Agency decided to modify and re-
5 approve the Tres Hermanos PSA. At a joint special meeting on January 13, 2017, under
6 Agenda Item 5.1, the City Council and the Successor Agency Board considered the
7 approval of a revised Tres Hermanos PSA (the "\$100 Million Tres Hermanos PSA"). The
8 principal revision was to increase the purchase price from \$41.65 million to \$100 million,
9 based on the Heglar Appraisal.

10 86. Attached to the Agenda were two memoranda dated January 13,
11 2017 from Mr. Casso to the City Council and Successor Agency, respectively, in which he
12 stated that (a) the Dissolution Act required the Successor Agency to dispose of its property
13 "in a manner that maximizes value," (b) "[t]he City will purchase the Property from the
14 Agency for the appraised value as open space of \$100,000,000," (c) Industry "proposes to
15 use the Property for open space, public facility use or preservation use" and (d) the
16 "proposed purchase/sale . . . awaits Oversight Board and Department of Finance approval,
17 in compliance with California law."

18 87. Also attached to the Agenda was proposed Resolution No. CC 2017-
19 01 (the "1/13/17 City Council PSA Resolution") regarding the acquisition of Tres
20 Hermanos and the requisite CEQA findings. That resolution stated:

21 a. Pursuant to the LRPMP, the Successor Agency "desires to sell
22 the Property at its highest and best use, maximizing its value"

23 b. "The purchase price is \$100,000,000, which represents an
24 amount equal to or greater than the current fair market value of the Property, as determined
25 by" the Heglar Appraisal.

26 c. Industry's purchase of Tres Hermanos was exempt from
27 environmental review under CEQA pursuant to the "common sense" exemption in
28 Section 15061(b)(3) of the State CEQA Guidelines The primary reasons were still

1 that "[t]he sale of the property does not involve any land use entitlements that will allow
2 for development on the property" and "[a]ny future development at the property will be
3 subject to additional environmental review and independent analysis as required by
4 CEQA."

5 88. The 1/13/17 City Council PSA Resolution did not include any
6 operative statement that the City Council approved the \$100 Million Tres Hermanos PSA
7 or disclose that Industry had committed to lease Tres Hermanos to San Gabriel WP for the
8 development of a major solar facility.

9 89. Diamond Bar is informed and believes, and thereon alleges, that the
10 City Council unanimously adopted the 1/13/17 City Council PSA Resolution.

11 90. Also attached to the Agenda was proposed Resolution No. SA 2017-
12 02 (the "1/13/17 Successor Agency PSA Resolution") regarding the sale of Tres Hermanos
13 and CEQA findings. That resolution states:

14 a. Pursuant to the LRPMP, the Successor Agency "desires to sell
15 the Property at its highest and best use, maximizing its value"

16 b. "The purchase price is \$100,000,000, which represents an
17 amount equal to or greater than the current fair market value of the Property, as determined
18 by" the Heglar Appraisal.

19 c. Industry's purchase of Tres Hermanos was exempt from
20 environmental review under CEQA pursuant to the "common sense" exemption in Section
21 15061(b)(3) of the State CEQA Guidelines.

22 91. The 1/13/17 Successor Agency PSA Resolution did not include any
23 operative statement that the Successor Agency Board approved the \$100 Million Tres
24 Hermanos PSA or disclose that Industry had committed to lease Tres Hermanos to San
25 Gabriel WP for the development of a major solar facility, which the Successor Agency
26 Board obviously knew.

1 92. Diamond Bar is informed and believes, and thereon alleges, that the
2 Successor Agency Board unanimously adopted the 1/13/17 Successor Agency PSA
3 Resolution.

4 93. After the Successor Agency Board approved the \$100 Million Tres
5 Hermanos PSA, the Chino Hills City Council requested, in a February 6, 2017 letter to
6 Sean Varner, General Counsel for the Oversight Board, that the Oversight Board (a)
7 require Industry to request and obtain a general plan conformity finding pursuant to
8 Government Code Section 65402(b) before approving the sale and (b) require CEQA
9 review for Industry's planned project (Chino Hills still did not know at this point that
10 Industry's project was a major solar facility) .

11
12 **ALL THE WHILE WORK ON THE SOLAR PROJECT**
13 **CONTINUES IN EARNEST**

14 94. Diamond Bar is informed and believes, and thereon alleges, that as of
15 April 21, 2017, San Gabriel WP had assembled an extensive team of consultants and
16 attorneys to develop solar projects on Tres Hermanos (the "San Gabriel Consultants").
17 The "entitlement consultants" on the team at that point included:

- 18 • Ambient Communities/Sustainable Water and Power (total environmental
19 process, including negotiating subcontractor agreements, managing hiring
20 of vendors, managing biological and construction scheduling and costs,
21 and EIR completion)
- 22 • DAMG Advisors (project and budget financing, contract negotiation)
- 23 • JGM Design, Inc. (environmental surveying, civil engineering, planning
24 services, construction management)
- 25 • ZGlobal Power Engineering (pre-application to SCE, preparation of
26 interconnection requests to the CAISO and SCE)
- 27 • Blue Oak Energy (geotechnical engineering and exploration services, soil
28 borings, field electrical resistivity, percolation testing, evaluation and
suitability for slope stability, thermal resistivity testing, corrosion
laboratory testing, pile installation, pile testing, pile extraction)
- Kimley Horn & Associates (base map preparation, preliminary civil
engineering, conceptual site plan, preliminary energy modeling, surveying
services, environmental and biological services, geotechnical analysis,

- entitlement and permitting coordination (including CEQA and FEMA), final engineering design, conduit design and layout, utility coordination
- Terracon Consultants, Inc. (geology, boring and soil analysis)
 - Solar Engineering Consultants (specialize in solar energy and storage projects and technologies)
 - Helix (preparation of draft EIR, coordination of biology studies to engineering layouts, study of visual impact and neighbors)
 - Kitchell (construction advisor)
 - Arcadis (technical, environmental, engineering and business advisory support services, including business case development, development management, delivery structure advice, operation and maintenance advice, statutory compliance advice and technical and environmental due diligence)
 - Randall MacDougall (direct and assess entity assets, oversee project finance and architecture modeling, analysis of potential investment opportunities).
 - Brooks Kincaid (modeling project finances and architecture, coordinating with Ambient Communities and other consultants, researching component technologies)
 - Sonia Walcott (organizational filing, office bookkeeping, permit tracking)
 - Dennis & Dennis LP (accounting)
 - Forward Realty/Michael Christopher (consulting).

The legal team included:

- Downey Brand (land use and EIR)
- Dechert LLP (corporate and tax advice, financial structure)
- Day, Carter & Murphy (interconnection regulatory issues)
- Orrick, Herrington & Sutcliffe (bond counsel)
- Dongell Lawrence Finney (governmental relations with regard to CAISO and California Public Utilities Commission).

95. Diamond Bar is informed and believes, and thereon alleges, for the period commencing on or about April 1, 2016 and ending on or about April 2017, the San Gabriel Consultants billed San Gabriel WP a minimum of approximately **\$8,803,123** for their collective services, as shown on the following table:

Consultant/Law Firm	Aggregate Fees
Ambient Communities/ Sustainable Water and Power	\$1,065,000
DAMG Advisors	645,000
JGM Design, Inc.	2,501,360
ZGlobal Power Engineering	1,075,150

Blue Oak Energy	341,686
Kimley Horn & Associates	28,585
Solar Engineering Consultants	1,718
Helix	1,222,643
Arcadis	115,000
Randall MacDougall/Silverado Company	112,000
Brooks Kincaid	118,990
Sonia Walcott	66,000
Dennis & Dennis LP	27,500
Forward Realty/Michael Christopher	30,000
Downey Brand	80,707
Dechert LLP	813,440
Day, Carter & Murphy	50,245
Orrick, Herrington & Sutcliffe	138,099
Dongell Lawrence Finney LLP	\$370,000
TOTAL	\$8,803,123

96. Diamond Bar is informed and believes, and thereon alleges, that Industry assembled its own consultant/legal team with respect to the development of solar projects on Tres Hermanos (the "Industry Consultants"), which includes the following individuals and entities:

- Cordoba Engineering (real estate advisory services, energy consultants)
- CNC Engineering (engineering services)
- DAMG Advisors (project and budget financing, contract negotiation)
- Lang, Hansen, O'Malley (lobbyist)
- Dolphin Communications (public relations)
- Bouza Law Firm (energy legal services)

97. Diamond Bar is informed and believes, and thereon alleges, that for the period commencing on or about January 2016 and ending on or about September 2017, the Industry Consultants billed Industry a minimum of approximately **\$3,848,516** for their collective services, as shown on the following table:

Consultant/Law Firm	Aggregate Fees
Cordoba Engineering	\$900,000
CNC Engineering	99,046
DAMG Advisors	1,826,681

Lang, Hansen, O'Malley	475,000
Dolphin Communications	264,021
Bouza Law Firm	283,768
TOTAL	\$3,848,516

98. The dollar amounts set forth in paragraphs 95 and 97, above, are based on invoices and other documents obtained by Chino Hills and Diamond Bar in response to multiple Public Records Act requests and on websites. Chino Hills and Diamond Bar have submitted further Public Records Act requests for invoices and other documents relating to the work performed and amounts billed by the consultant/legal teams for Industry and San Gabriel WP. Diamond Bar, however, is informed and believes, and thereon alleges, that, at a minimum, the San Gabriel Consultants have performed additional and significant work with respect to the proposed Tres Hermanos solar project since April 2017, and billed significant additional amounts to San Gabriel WP for that work for which Industry has reimbursed or will reimburse San Gabriel WP.

99. At its meetings, the Industry City Council normally approves a "register of demands," which approval authorizes City officials to pay Industry's bills for a specified period. A copy of the register is attached to the meeting agenda and includes a description and the amount of each invoice to be paid. Diamond Bar is informed and believes, and thereon alleges, that none of the registers provided to the City Council since April 2016 has included any invoices from any of the San Gabriel Consultants.

100. Diamond Bar is informed and believes, and thereon alleges, that in November 2016, a San Gabriel WP attorney prepared a draft of a 49-page facility power purchase agreement (the "Power Purchase Agreement") with regard to the contemplated solar facilities on Tres Hermanos and other portions of the Total Site, executed by SGV Solar ProjectCo 1, LLC, which Diamond Bar is informed and believes, and thereon alleges, is affiliated with San Gabriel WP, as seller, and the Industry Public Utilities Commission (the "IPUC"), as buyer. It states that "Seller wishes to develop, construct, own, operate and maintain a solar photovoltaic electric generation facility . . . with a

1 designed output of 135 MW AC to be located at the Premises . . .," and to sell the
2 electricity produced by the solar facility to the IPUC.

3 101. Diamond Bar is informed and believes, and thereon alleges, that in
4 March 2016, Industry's consultant Cordoba Corporation prepared a Summary of Strategic
5 Initiatives and Proposal of Services for the IPUC (the "2016 Cordoba Proposal"). This
6 proposal states that IPUC currently services an electrical load of 7 megawatts ("MW"), and
7 that the total demand for all electrical customers within Industry's boundaries is 165 MW.

8 102. Diamond Bar is informed and believes, and thereon alleges, that San
9 Gabriel WP retained Helix Environmental Planning to prepare a draft EIR for the proposed
10 Tres Hermanos solar project. Helix submitted an invoice in the amount of \$300,000 for its
11 professional services through February 2017, which included (a) coordinating biology
12 studies to engineering layouts, (b) studying visual impacts to neighbors and corresponding
13 open space and (c) studying how the discovery of the Burrowing Owl affects solar panel
14 layout. The invoice states that a "final draft" of the draft EIR should be prepared by the
15 end of March.

16
17 **THE OVERSIGHT BOARD REDUCES THE PURCHASE PRICE TO \$41.65**
18 **MILLION AND ATTEMPTS TO JUSTIFY IT BY IMPOSING A MEANINGLESS**
19 **COVENANT**

20 103. More than seven months after Industry and the Successor Agency
21 Board approved the \$100 Million Tres Hermanos PSA, and without seeking a general plan
22 conformance finding as requested by the Chino Hills, the Successor Agency requested the
23 Oversight Board's approval of the sale. The Oversight Board considered the sale at a
24 special meeting on August 24, 2017 (the "August 24 Meeting"). The agenda description
25 generally provided that the Oversight Board would be considering a resolution to approve
26 the \$100 Million Tres Hermanos PSA.

27 104. Included in the agenda materials for the August 24 Meeting was an
28 August 15, 2017 memorandum from Varner & Brent LLP, counsel for the Oversight

Board, stating that (a) the Laurain Appraisal, which established a market value of \$41.65 million, was based on a nonexistent, hypothetical condition, (b) the Oversight Board requested a new appraisal without the hypothetical condition to achieve the highest and best use, (c) the second, Heglar Appraisal valued Tres Hermanos at \$100 million based on its current zoning designations, (d) pursuant to the 2/21/14 DOF Approval Letter for the LRPMP (i.e., the Long-Range Property Management Plan prepared by the Successor Agency), any Successor Agency action taken pursuant to the approved LRPMP is subject to Oversight Board approval, (e) GH America had increased its offer to \$108 million and, at the request of the Oversight Board, had provided a presentation concerning its intended development of the property, which included approximately 1,881 residential units, mixed-use, commercial and open space, (f) the Oversight Board has fiduciary responsibilities to taxing entities that benefit from the distributions of property tax and other revenues and (g) the disposition of any property must be done in a manner aimed at maximizing value.

105. Also included in the agenda materials for the August 24 Meeting was a memorandum from Mr. Casso dated August 22, 2017, which stated that (a) that there was no purpose or value in placing a covenant on Tres Hermanos to restrict its use to public/municipal purposes because Government Code Section 37351 already imposed that restriction and (b) the Oversight Board had a ministerial duty to approve the \$100 Million Tres Hermanos PSA because the sales price was consistent with the LRPMP.

106. Also included in the agenda materials was proposed Resolution No. OB 2017-05 (the "8/24/17 OB PSA Resolution") to approve the Successor Agency's sale of Tres Hermanos to Industry and make CEQA findings. The resolution states that (a) "[t]he Successor Agency intends to sell the Property to the City of Industry . . . for a purchase price of \$100,000,000, which represents an amount equal to or the fair market value of the Property, as determined by" the Heglar Appraisal, (b) the sale "must be completed . . . in a manner aimed at maximizing value" and (c) the Oversight Board "hereby approves the sale and disposition of the Property in accordance with the terms of the approved LRPMP and the Purchase Agreement."

1 107. On August 24, 2017, prior to the August 24 Meeting, David DeBerry,
2 the Diamond Bar City Attorney, submitted a letter to the Oversight Board in opposition to
3 the sale. That letter documented that the approval of the \$100 Million Tres Hermanos PSA
4 would be unlawful, in part because (a) the LRPMP does not require the Successor Agency
5 to sell the property to Industry for \$8 million less than the \$108 million offered by GH
6 America, (b) the approval of the sale would place Industry's interests ahead of the taxing
7 entities, in violation of the Oversight Board's fiduciary duties, (c) Industry's proposed solar
8 use was entirely inconsistent with the general plan and zoning laws of both Diamond Bar
9 and Chino Hills, (d) the Oversight Board could not approve the sale because Industry had
10 not submitted a request to either Diamond Bar or Chino Hills for a general plan conformity
11 finding consistent with Government Code Section 65402(b), (e) no environmental review
12 of the project had been undertaken as required by CEQA, and (f) that Industry's acquisition
13 of the property was not "necessary or proper for municipal purposes" in violation of
14 Government Code Section 37351.

15 108. Konradt Bartlam, the Chino Hills City Manager, also submitted a
16 letter to the Oversight Board prior to the August 24 Meeting in opposition to the sale. In
17 that letter, he documented the following objections:

18 a. Industry had deceived the public for years regarding its plans
19 for Tres Hermanos and concealed its plan to develop significant solar facilities on Tres
20 Hermanos and that it was inconceivable that Industry would pay \$100 million for the
21 property to preserve it as open space.

22 b. The Oversight Board could not approve the \$100 Million Tres
23 Hermanos PSA because the required CEQA review for the project had not occurred.
24 Chino Hills concurrently submitted numerous documents it had obtained from Industry in
25 response to Public Records Act requests, including many of the documents discussed in
26 preceding paragraphs, which demonstrated that Industry had firmly committed to the
27 development of large-scale solar projects on Tres Hermanos, had sufficiently developed
28 plans for that project and had already expended many millions of dollars for consultants.

1 As a result, the general exemption in Section 15061(b)(3) of the State CEQA Guidelines
2 did not apply. To the contrary, the proposed solar project would result in a number of
3 significant environmental impacts, including significant biological, aesthetic and cultural
4 resource impacts that required the preparation of an EIR prior to the Oversight Board's
5 approval of the sale. These statements of environmental concerns were supported by
6 biological and cultural resource studies of Chino Hills, and Tres Hermanos in particular, in
7 connection with the update of the Chino Hills General Plan adopted in 2015, as well as
8 studies showing the harmful effects of solar arrays on wildlife and birds.

9 c. Industry failed to seek a general plan conformity finding from
10 either Chino Hills or Diamond Bar in accordance with Government Code
11 Section 65402(b).

12 109. During the August 24 Meeting, representatives from Diamond Bar
13 and Chino Hills orally apprised the Oversight Board of the concerns raised in their letters.
14 In addition thereto, the following comments were made:

15 a. Mr. Casso spoke at length in support of the \$100 million
16 purchase price approved by the Successor Agency. He stated that Mr. Rabe of Keyser
17 Marston had opined that the \$100 million Heglar Appraisal had been "done correctly and
18 was compliant with the normal appraisal processes and procedures, and the [\$100 million]
19 value is a reasonable value. The City has offered that." He later emphasized that the \$100
20 million purchase price approved by the Successor Agency Board was consistent with the
21 LRPMP and maximized value:

22 When you've got a Long-Range Property Management Plan that
23 gives you value, if I recall it correctly, somewhere between \$85 to
24 \$120 million for this piece of dirt, and we have an appraisal [i.e.,
25 the Heglar Appraisal], which this body's consultant, Mr. Rabe, has
26 said – this appraisal – he gave it a thumbs up, then I think we have
fallen within the confines of the Long-Range Property
Management Plan and value has been maximized.

27 b. Mr. Casso also stated "this project here – the City is offering to
28 put up – it's looking at the **solar farm project**"

1 c. Chairman Kreimann, who stated that he regularly reviews
2 appraisals as part of his job, was concerned that the Heglar Appraisal undervalued the
3 Property at \$100 million because there was no discussion or analysis in the Heglar
4 Appraisal "about the possibility of there being a solar farm . . . that wasn't contemplated as
5 part of this particular appraisal."

6 d. Chairman Kreimann also stated that "we have a fiduciary
7 responsibility to the communities that are going to be impacted. And in this particular
8 instance, Industry is not a taxing entity. They're not. The County is, the City of Diamond
9 Bar, Chino Hills . . . they're impacted."

10 e. Nathan Heyde, the Oversight Board's counsel, advised that the
11 Oversight Board had an obligation to the taxing entities to maximize value in the sale of
12 Tres Hermanos.

13 110. Following public comment, no motion was made to approve or
14 disapprove the \$100 Million Tres Hermanos PSA approved by the Successor Agency.

15 111. Instead, once public comment was closed and without addressing
16 any of the concerns raised by members of the public, Mr. Philips, acting at least ostensibly
17 in his capacity as a member of the Oversight Board, quickly made a motion to direct the
18 Successor Agency to sell the Property to Industry for **\$41.65 million**, \$58.35 million less
19 that Industry had offered, and place a deed restriction on Tres Hermanos limiting its use to
20 "open space, public use or preservation." He took this action knowing that Mr. Casso had
21 already opined that such a deed restriction served no purpose and had no impact on the
22 value to Industry and without disclosing Industry's intent to develop a major solar facility
23 on Tres Hermanos. The motion was seconded by Esteban Torres, Industry's second Board
24 appointee, who Diamond Bar is informed and believes, and thereon alleges, is the father-
25 in-law of Mr. Casso.

26 112. Chairman Kreimann then offered an amended motion that also
27 included terms different from the terms in the \$100 Million Tres Hermanos PSA, which
28 terms included the preparation of a new appraisal for Tres Hermanos that assumed the

1 development of a solar project on the property and the requirement that CEQA review
2 occur prior to the approval of the proposed sale. Mr. Casso vigorously objected to that
3 amended motion, repeatedly stating it exceeded the scope of the Oversight Board's
4 "statutory authority." He stated no objection, however, to Mr. Philips' motion,
5 notwithstanding that it significantly deviated from the terms of the \$100 Million Tres
6 Hermanos PSA and directly contradicted his earlier statements that the much higher
7 \$100 million purchase price was required for compliance with the LRPMP. Mr. Casso was
8 allowed to speak at length during the Oversight Board meeting and was the only member
9 of the public that was allowed to address the Oversight Board after Mr. Philips' motion,
10 which deprived the rest of the public of an opportunity to comment on an action that
11 differed dramatically from what was noticed in the agenda and agenda materials.

12 113. Mr. Philips then stated why he had proposed a significant decrease in
13 the purchase price: "Frankly, there's more cash to put into the [solar] project." He then
14 characterized this as a primary "justification" for his proposed \$41.65 million purchase
15 price. In other words, this was Industry's tactic to effectively extract almost \$60 million of
16 Tres Hermanos's value and use it to fund the Tres Hermanos solar project, to the detriment
17 of the Diamond Bar, Chino Hills and the other taxing entities which had a beneficial
18 interest in the sale of Tres Hermanos and to which the Oversight Board owed a fiduciary
19 duty.

20 114. In making his motion, Mr. Philips was hopelessly conflicted. He had
21 the triple role of Industry City Manager, Successor Agency Executive Director and
22 Oversight Board member. As a result, he put Industry's interests ahead of the taxing
23 entities to whom he owed a fiduciary duty.

24 115. After further discussion, Mr. Philips' motion was narrowly approved
25 by a 4-3 vote, with Mr. Philips casting the deciding vote. Outside of Mr. Casso, no
26 member of the public was afforded the opportunity to address the Oversight Board on the
27 extreme reduction in price or the proposed deed restriction.

1 116. The next day, in an August 25, 2017 letter from Mark Hensley, the
2 Chino Hills City Attorney, to Chikako Takagi-Galamba, a DOF Manager, Mr. Hensley
3 requested that DOF exercise its authority to review the Oversight Board's action pursuant
4 to HSC Section 34179(h). He stated that (a) Mr. Philips rationale for discounting the
5 purchase price by more than \$58 million was to provide more money for Industry to spend
6 on the project, when neither he nor anyone else involved with the project had explained
7 what the project was, (b) the Oversight Board had no legal authority to reduce the purchase
8 price and its action constituted a gift of public funds and failed to maximize the value of
9 the property, (c) the resuscitated restrictive covenant was illusory since Government Code
10 Section 37351 already prohibits a city from acquiring real property outside its boundaries
11 for any purpose other than "municipal purposes," and therefore there was no consideration
12 for the huge price reduction, contrary to the Oversight Board's fiduciary duty to maximize
13 the value of the property, (d) the sale was inconsistent with the LRPMP, which valued Tres
14 Hermanos at approximately \$85-122 million, (e) Industry had deceived the Oversight
15 Board and the public by constantly making false statements that the property would be
16 used for open space and recreational purposes, while it was spending millions of dollars to
17 cause the development of a major solar facility, and (f) as a result of this deception, the
18 affected taxing agencies have been harmed.

19 117. On August 28, 2017, Mr. DeBerry wrote to Ms. Takagi-Galamba and
20 voiced Diamond Bar's own strong objections to the Oversight Board's action and also
21 requested that DOF exercise its authority to review it. He stated that (a) the \$41.6 million
22 purchase price failed to maximize the value of Tres Hermanos, (b) the severely discounted
23 purchase price was inconsistent with the \$85-122 million value set forth in the LRPMP and
24 failed to the comply with the "basic criteria" for a proposed purchase agreement, including
25 the requirement that the property be sold at a "reasonable price," (c) the Laurain Appraisal
26 was based on the assumption that the property would only be used as open space, but the
27 restrictive covenant would allow any public use so that the Laurain Appraisal provided no
28 basis for the \$41.6 million purchase price, (d) Industry "may, as a matter of law, only

1 purchase property outside its jurisdiction as is 'necessary or proper for municipal purposes'
2 under Government Code Section 37351, (e) the Oversight Board had no authority to
3 approve a \$41.6 million sale because the Successor Agency Board had not approved a sale
4 for \$41.6 million, (f) the public notice for the Oversight Board meeting was deficient, (g)
5 the Oversight Board's approval violated CEQA because there was no environmental
6 review at all and (h) the Oversight Board's approval violated Government Code Section
7 65402 because Industry had not requested a general plan conformity review from either
8 Diamond Bar or Chino Hills.

9 118. In an August 31, 2017 letter from Dena Smith, the Interim Chief
10 Executive Officer of SB County, to Ms. Takagi-Galamba and Mr. Howard of DOF, SB
11 County also requested that DOF exercise its right to review the Oversight Board's
12 approval of the sale. The letter emphasized that (a) Tres Hermanos had been appraised at a
13 value of \$100 million and Industry had offered to purchase it for that amount and,
14 therefore, the Oversight Board's approval of the sale for \$41.65 million "based on a
15 specious offer by the City of Industry to restrict the use of the property in a manner already
16 imposed by Government Code Section 37351, violated the Oversight Board's obligation to
17 expeditiously sell the property while maximizing its value" (emphasis in original), and (b)
18 the \$41.65 million purchase price was in clear conflict with the LRPMP, which valued
19 Tres Hermanos at between \$85-122 million.

20 119. DOF also received an August 31, 2017 letter from Jeff Ballinger,
21 whose firm serves as General Counsel to the Chino Valley Fire District, one of the taxing
22 entities with respect to Tres Hermanos. He set forth the Fire District's vigorous opposition
23 to the Oversight Board's approval of the \$41.65 million purchase price. He noted that (a)
24 the purchase price was based on the Laurain Appraisal, which the Oversight Board had
25 previously rejected because it assumed open space use, (b) the purchase price was
26 approximately \$58.4 million less than the \$100 million purchase price that Industry had
27 already agreed to pay, (c) the vaguely worded deed restriction approved by the Oversight
28 Board would allow Industry to proceed with its proposed solar project, so Tres Hermanos'

1 value was substantially greater than a property restricted simply for open space uses, and
2 (d) as a result, the \$41.6 million purchase price was not representative of the property's
3 value and did not maximize value, and the Oversight Board had therefore abrogated its
4 fiduciary duty to the taxing entities under HSC Section 34179.

5
6 **DIAMOND BAR DEMANDS THE OVERSIGHT BOARD**

7 **CURE ITS BROWN ACT VIOLATION**

8 120. As noted above, the agenda and agenda materials for the August 24
9 Meeting provided the public with no notice of the ultimate action taken by the Oversight
10 Board and what apparently Mr. Philips had in mind all along. The agenda and agenda
11 materials led the public to believe that the Oversight Board was only considering the \$100
12 million Tres Hermanos PSA, not a dramatically different real estate deal involving a steep
13 reduction in price based on illusory restrictive covenant. All written and public comments
14 focused on whether the \$100 Million Tres Hermanos PSA was appropriate. The public
15 was afforded no opportunity whatsoever to comment on the drastically different real estate
16 deal approved by the Oversight Board following Mr. Philip's 11th-hour motion.

17 121. In a September 21, 2017 letter from Mr. DeBerry, the Diamond Bar
18 City Attorney, to the Oversight Board, he submitted a demand to the Oversight Board that
19 it correct violations of the Brown Act relating to its approval of the \$41.65 million Tres
20 Hermanos PSA. He stated that the Oversight Board's action violated multiple provisions
21 of the Brown Act that require that actions be taken in a public noticed meeting and in open
22 session, that a description of the Oversight Board's proposed actions appear in the agenda
23 and that the public be afforded a meaningful opportunity to directly address the legislative
24 body before and during consideration of the proposed action. He stated that the Oversight
25 Board's ultimate action was so materially different than what was on the agenda and in the
26 agenda materials that it "provided no clues as to the Board's ultimate action" and therefore
27 failed to meet the letter and spirit of the Brown Act. As required by Government Code
28

1 Section 54960.1, Mr. DeBerry demanded that the Oversight Board cure its violations
2 within 30 days.

3 122. In response to Mr. DeBerry's letter, Mr. Varner, the Oversight Board
4 General Counsel, denied that there was any Brown Act violation in an October 18, 2017
5 letter. The 30-day cure period subsequently expired.

6
7 **INDUSTRY'S FAILURE TO SEEK GENERAL PLAN CONFORMITY REVIEW**
8 **IN ACCORDANCE WITH SECTION 65402(b)**

9 123. Industry apparently realized that its failure to seek general plan
10 conformity review from Diamond Bar and Chino Hills was problematic. In a September 1,
11 2017 letter from Mr. Philips, as Industry City Manager, to Greg Gubman, Diamond Bar's
12 Community Development Director, he stated that Industry was submitting to the Diamond
13 Bar Planning Commission notice of the location of Tres Hermanos, the extent of its
14 acquisition (the entire property) and the purpose of the acquisition, as required by
15 Government Code Section 65402(b). However, he once again refused to state the specific
16 and primary purpose of the acquisition – the development of a major solar project – and
17 once again obscured its plans by vaguely stating that it was acquiring the property "for
18 open space, preservation, public facility or other public purposes, in compliance with
19 Government Code Section 37351 and the deed restriction that will be imposed by the
20 Oversight Board." He claimed, falsely, that "[a]t this time, the City does not have any
21 more definitive plans for the future use of Tres Hermanos."

22 124. Mr. Gubman responded to Mr. Philips in a September 13, 2017 letter.
23 He first noted that the request for general plan conformity review appeared to be untimely
24 because the Industry City Council had already approved the acquisition of Tres Hermanos.
25 He then stated that the September 1 letter failed to identify Industry's purpose in acquiring
26 the property, as required by Section 65402(b), and that "a determination as to whether
27 Industry's acquisition is consistent [with the Diamond Bar general plan] can only be made
28 if Industry identifies and provides reasonable details regarding the purpose, i.e., the use,

1 for which it is acquiring the Property." He also pointed out that the claim that Industry had
2 no "definitive plans" for Tres Hermanos appeared to be contradicted by the existence and
3 terms of the Original Master Lease (Diamond Bar was still unaware of the four Master
4 Lease Amendments). He concluded that, because Industry had not specified the purpose
5 of the acquisition, the matter had not been properly "submitted" to Diamond Bar and the
6 40-day review period mandated in Government Code Section 65402 had therefore not
7 commenced.

8 125. Mr. Philips then responded to Mr. Gubman in a September 21 letter
9 and made it clear that Industry had no intention of explaining its actual purpose for
10 acquiring Tres Hermanos. He asserted in conclusory terms that Industry had satisfied
11 Section 65402(b) by describing the purpose of its acquisition as "open space, preservation,
12 public facility or other public purposes, in compliance with Government Code Section
13 37351 and the deed restriction" He further argued that Diamond Bar had no right to
14 "demand[] details of the purpose" and its 40-day review period began when his
15 September 1 letter was delivered.

16 126. On, September 1, 2017, Mr. Philips sent a letter to Joann Lombardo,
17 the Chino Hills Community Development Director, requesting that the Chino Hills
18 Planning Commission conduct a general plan conformity review under Section 65402. It
19 was almost identical to his September 1, 2017 letter to Mr. Gubman.

20 127. On September 28, 2017, Ms. Lombardo responded to Mr. Philips by
21 letter. She stated that Mr. Philip's letter failed to identify the location of Tres Hermanos
22 within Chino Hills' jurisdiction and failed to identify the purpose and extent of Industry's
23 use of that portion of Tres Hermanos. She concluded that Industry's submittal did not
24 comply with Section 65402 and, therefore, "we cannot determine whether Industry's
25 proposed purchase and subsequent use of the Tres Hermanos property is for a public
26 purpose or if it conforms to the City of Chino Hills General Plan."

27 128. Mr. Philips then responded to Ms. Lombardo in an October 3, 2017
28 letter that was similar in substance to his September 21 response letter to Mr. Gubman.

1 129. At a special meeting on October 9, 2017, under Agenda Items 4 and 5,
2 the Chino Hills Planning Commission considered Industry's request for general plan
3 conformity review pursuant to Section 65402(b). Attached to the Agenda was a Planning
4 Commission Agenda Report dated October 9, 2017 that reiterated and augmented the
5 discussion in Ms. Lombardo's September 28 letter and summarized Mr. Philip's inadequate
6 response. Also attached to the Agenda was a proposed resolution stating that the Planning
7 Commission denied Industry's request for general plan conformity review because (a)
8 Industry had not provided adequate information to make a conformity finding
9 determination pursuant to Section 65402(b) and (b) Industry had already approved the
10 purchase of Tres Hermanos on September 28, 2017. The Planning Commission
11 unanimously adopted that resolution.

12 130. At its meeting on October 10, 2017, under Agenda Item 6.1, the
13 Diamond Bar Planning Commission considered Industry's request for general plan
14 conformity review pursuant to Section 65402(b). Attached to the Agenda was a Planning
15 Commission Agenda Staff Report dated October 10, 2017 that reiterated and augmented
16 the discussion in Mr. Gubman's September 13 letter and summarized Mr. Philip's
17 inadequate response. Following the public hearing, the Planning Commission
18 unanimously adopted a resolution finding that (a) Industry had "not provided sufficient
19 information pertaining to the purpose of the Proposed Acquisition for the Planning
20 Commission to determine whether or not the proposed acquisition is in conformance with
21 the General Plan," (b) Industry had made "material misrepresentations to the Planning
22 Commission" as to its plans for Tres Hermanos, (c) Industry's application was untimely
23 and did not comply with Government Code Section 65402(b) and (d) because the
24 application was incomplete, the 40-day period for the Planning Commission to make a
25 general plan conformance finding had not begun to run.

1 **DOF INITIALLY ELECTS TO REVIEW, THEN RECONSIDERS AND DECIDES**
2 **NOT TO REVIEW, THE FINAL TRES HERMANOS PSA**

3 131. In the meantime, following the Oversight Board's approval of the
4 \$41.65 million sale, the 8/24/17 OB PSA Resolution was amended to reduce the stated
5 purchase price to \$41.65 million, and a recital was revised to state that this reduced
6 purchase price

7 represents an amount less than current value of the Property due
8 to the Property being subject to a restrictive covenant that
9 specifically limits the use of the Property to open space, public
10 use, or preservation. The reduced purchase price is equal to
value determined by" the [Laurain Appraisal].

11 132. Attached to the revised 8/24/17 OB PSA Resolution was a further
12 revised Tres Hermanos PSA (the "Final Tres Hermanos PSA"), in which the purchase
13 price was reduced to \$41.65 million. In addition, a new provision was added in Section 8
14 of the Final Tres Hermanos PSA and the required grant deed attached as Exhibit C thereto,
15 stating that "[p]ursuant to Health and Safety Code Sections 34181(a) and 34193.3, Buyer's
16 [Grantee's] use of the Site and any future use of the Site shall be used for open space,
17 public use, or preservation use only." Both provisions further states that the restrictive
18 covenant "will remain in effect in perpetuity" and the grant deed states that it "runs with
19 the land."

20 133. Diamond Bar is informed and believes, and thereon alleges, that on
21 September 21, 2017, Ms. Schlichting, as Industry's Chief Deputy City Clerk, emailed to
22 Mr. Howard of DOF a copy of the complete, revised 8/24/17 OB PSA Resolution and the
23 Final Tres Hermanos PSA.

24 134. Around the time that DOF received the revised 8/24/17 OB PSA
25 Resolution, Mr. Casso, as both Industry City Attorney and Successor Agency counsel,
26 delivered a September 19, 2017 letter to Mr. Howard of DOF, in which Mr. Casso
27 requested that DOF allow the revised 8/24/17 OB PSA Resolution to take effect, consistent
28 with HSC Sections 34179(h)(2) and 34181(f) (i.e., that DOF not exercise its right to

1 review the Oversight Board's action). He acknowledged that the estimated value of Tres
2 Hermanos in the LRPMP was approximately \$85-122 million, but never explained how the
3 \$41.65 million purchase price is consistent with the LRPMP. Instead, he claimed that the
4 term "maximizing value" is subjective, and deference is given to the legislative body (the
5 Oversight Board), so that the \$41.65 million purchase price did maximize value. He also
6 asserted that the purchase price was consistent with the Laurain Appraisal, once again
7 willfully disregarding that the Laurain Appraisal assumed open space use and did not
8 contemplate the development of the major solar projects contemplated in the Original
9 Master Lease and the Master Lease Amendments (collectively, the "Master Lease"), which
10 Mr. Casso also failed to disclose, or any other public use that involved any development.

11 135. On September 25, 2017, Brian Dunham, a DOF Analyst, advised Mr.
12 Philips in an email that DOF was requesting review of the revised 8/24/17 OB PSA
13 Resolution pursuant to HSC Section 34179(h).

14 136. In a November 2, 2017 letter, Mr. Howard of DOF advised Mr.
15 Philips that DOF would take no action with respect to the revised 8/24/17 OB PSA
16 Resolution and, therefore, the Final Tres Hermanos PSA:

17 [HSC] section 34191.5 (f) states actions to implement the
18 disposition of property pursuant to an approved Long-Range
19 Property Management Plan (LRPMP) shall not require review by
20 Finance. As such, Finance is taking no action on this OB
21 Resolution. It should be noted that pursuant to HSC section
22 341901.3, an approved LRPMP shall govern the disposition of
23 property so any oversight board action taken related to an
24 approved LRPMP should be consistent therewith.

23 **THE CITY COUNCIL "RATIFIES" THE FINAL TRES HERMANOS PSA**

24 137. The Successor Agency and Industry had another, mutual problem
25 because the Oversight Board did not approve the \$100 Million Tres Hermanos PSA that
26 the Successor Agency Board and the Industry City Council had approved on January 13,
27 2017. Instead, the Oversight Board formulated its own terms by reducing the purchase
28 price to \$41.65 million and imposing a restrictive covenant. Diamond Bar is informed and

1 believes, and thereon alleges, that in an effort to paper over the Oversight Board's
2 independent action, the Successor Agency and the City Council decided to "ratify" the
3 Final Tres Hermanos PSA approved by the Oversight Board. At back-to-back meetings on
4 September 28, 2017, the City Council (under its Agenda Item 6.1) and the Successor
5 Agency Board (under its Agenda Item 5.1) considered such "ratification."

6 138. Attached to each Agenda was a September 28, 2017 Memorandum
7 from Mr. Casso to both the City Council and Successor Agency Board. He stated that
8 "[g]iven the overwhelming concern about the preservation of Tres Hermanos, the OB
9 considered a motion imposing a deed restriction on the property as to its use by any future
10 owner, including the City of Industry, at a price of \$41,650,000 that reflected the use
11 restriction." Mr. Casso made this statement despite having previously advised the
12 Oversight Board that the restrictive covenant served no purpose. Contrary to this new
13 position, however, the \$41.65 million purchase price obviously did not reflect the
14 development of a public use on the property or the development of the major solar facility
15 planned by Industry and San Gabriel WP.

16 139. No resolution to approve the proposed "ratification" was attached to
17 either of the Agendas.

18 140. On September 27, 2017, prior to the "ratification" hearings, Mr.
19 DeBerry, the Diamond Bar City Attorney, submitted a letter to the City Council and
20 Successor Agency Board in opposition. In that letter, he stated that Diamond Bar's
21 objections to the proposed approvals included the following: (a) the City Council could
22 not take action prior to the completion of general plan conformity review by the Diamond
23 Bar Planning Commission pursuant to Government Code Section 65402(b); (b) neither
24 body should take any action until DOF had completed its review of the Oversight Board's
25 action and determined whether to disapprove it; (c) that Industry's contemplated purchase
26 of the property is not for a valid municipal purpose and thus does not comply with
27 Government Code Section 37351; (d) the purchase and sale violated the LRPMP; (e) the
28 sale of Tres Hermanos for \$41.65 million constituted an unconstitutional gift of public

1 funds because (i) the fair market value of the property was at least \$100,000,000 and (ii)
2 there was no appraisal that supported the "low ball" selling price; and (f) CEQA review
3 was required before either body could ratify the purchase and sale of the property.

4 141. Also on September 28, 2017, prior to the "ratification" hearings, Mr.
5 Hensley, the Chino Hills City Attorney, submitted a letter to the Industry City Council and
6 Successor Agency Board in opposition. In that letter, he documented at length that CEQA
7 review was required prior to the approval of the Final Tres Hermanos PSA by the City
8 Council or the Successor Agency Board and included documentary evidence that the
9 planned solar project would result in a number of significant environmental impacts,
10 including significant biological, aesthetic and cultural resource impacts, which required the
11 preparation of an EIR prior to the Oversight Board's approval of the sale. The evidence
12 included biological and cultural resource studies of Chino Hills, and Tres Hermanos in
13 particular, in connection with the update of the Chino Hills General Plan adopted in 2015,
14 as well as studies showing the harmful effects of solar arrays on wildlife and birds. The
15 letters also stated that Industry must comply with Government Code Section 65402(b) by
16 requesting a general plan conformity report by the Chino Hills Planning Commission prior
17 to the City Council's approval of the Final Tres Hermanos PSA.

18 142. Nonetheless, at their September 28 meetings, the City Council and
19 Successor Agency Board, with virtually no discussion, each unanimously approved the
20 Oversight Board's action at the August 24 Meeting.

21
22 **THE CITY COUNCIL "RATIFIES" THE MASTER LEASE**

23 143. On May 8, 2017, Chino Hills received from Ms. Schlichting, as
24 Industry Chief Deputy Clerk, what Ms. Schlichting stated was an "executed copy of the
25 [Original Master Lease]," in response to multiple Public Records Act requests. However,
26 the copy provided omitted Exhibit "A" to the document, which was the legal description of
27 the property leased to San Gabriel WP, without which it could not be determined whether
28 the leased property included Tres Hermanos. In a subsequent May 18, 2017 email from

1 Ms. Schlichting to Elizabeth Calciano, an Assistant City Attorney for Chino Hills, Ms.
2 Schlichting stated that the legal description had been "inadvertently omitted" and that a
3 copy was being sent to her by email. Diamond Bar subsequently received copies of these
4 documents for the first time.

5 144. In a September 21, 2017 letter from Mr. DeBerry, the Diamond Bar
6 City Attorney, to the Industry City Council, he submitted a demand that the Industry City
7 Council correct violations of the Brown Act relating to its approval of the Master Lease.
8 He stated that (a) the City Council had unlawfully approved the Original Master Lease and
9 one or more amendments thereto in closed session under the description of threatened
10 litigation, (b) Diamond Bar had never received copies of any of the amendments, (c) the
11 Master Lease had to be approved in open session, (d) if the City Council did in fact
12 approve the Original Master Lease and any amendments in open session, to provide
13 evidence of the same, and (e) the City Council had 30 days to cure the violations pursuant
14 to Government Code Section 54960.1 or face legal action.

15 145. In response to Mr. DeBerry's demand letter, the Industry City Council
16 attempted to cure the multiple Brown Act violations by "ratifying" the unspecified prior
17 actions it took regarding the Original Master Lease and all of the Master Lease
18 Amendments within the 30-day cure period. At its October 12, 2017 meeting, the City
19 Council considered "Ratification of Master Ground Lease with San Gabriel Valley Water
20 and Power and Amendment Nos. 1-4."

21 146. Mark Hensley, Chino Hills' City Attorney, submitted a letter to the
22 Industry City Council on October 11, 2017 objecting to the proposed "ratification" of the
23 Master Lease. In that letter, he documented at length that CEQA review was required
24 prior to the approval of the Master Lease by the City Council and included documentary
25 evidence that the planned solar project would result in a number of significant
26 environmental impacts, including significant biological, aesthetic and cultural resource
27 impacts, which required the preparation of an EIR prior to the City Council's approval of
28 the Master Lease. The evidence included biological and cultural resource studies of Chino

1 Hills, and Tres Hermanos in particular, in connection with the update of the Chino Hills
2 General Plan adopted in 2015, as well as studies showing the harmful effects of solar
3 arrays on wildlife and birds. The letter also stated that Industry must comply with
4 Government Code Section 65402(b) by requesting a general plan conformity report by the
5 Chino Hills Planning Commission prior to City Council's approval of the Master Lease.

6 147. Diamond Bar also submitted a letter on October 11, 2017 to the
7 Industry City Council, objecting to the proposed "ratification" of the Master Lease, stating
8 that (a) the proposed ratification was in fact a new approval, (b) the Master Lease was a
9 project under CEQA, so its environmental impacts must be studied, noting that Industry
10 has spent over \$10 million on consultants to further the goal of the solar project and the
11 Master Lease commits Industry to a solar project, (c) Industry must comply with
12 Government Code Section 65402(b) by obtaining a general plan conformity report from
13 the Diamond Bar Planning Commission prior to approving the Master Lease.

14 148. Attached to the Agenda for the October 12, 2017 City Council
15 meeting was a very brief Memorandum dated October 12, 2017 from Mr. Philips, the City
16 Manager, to the City Council. He stated that "City Staff is recommending that the City
17 Council ratify the [Original Master] Lease and the related amendments that were
18 previously executed by the City Manager at the direction of the City Council." He did not
19 state the reason for that recommendation and also notably did not state that the City
20 Council had approved the Original Master Lease or any of the Master Lease Amendments.

21 149. Attached as exhibits to Mr. Philips' Memorandum were copies of the
22 signed Original Master Lease and each Master Lease Amendment. The copy of the
23 Original Master Lease was different from the copy previously received by Chino Hills in
24 May 2017. The May 2017 copy stated "Dechert draft 5/8/16" in the upper right-hand
25 corner on the first page and had a network code of "22195068.10" in the lower left-hand
26 corner, while the copy attached to the October 12, 2017 Memorandum stated "Execution
27 Copy" in the upper right-hand corner on the first page and had a network code of
28 "22195068.14" in the lower left-hand corner. The text was also modified in several

1 respects and the October 12, 2017 copy included the Exhibit A legal description, while the
2 May 2017 copy did not. Diamond Bar is informed and believes, and thereon alleges, that
3 Industry materially modified the Original Master Lease after it was executed in May 2016
4 and attached the original signature pages and signed notary forms to the modified
5 document.

6 150. Prior to reviewing the Agenda package, neither Diamond Bar nor
7 Chino Hills had ever seen copies of any of the four Master Lease Amendments,
8 notwithstanding that they had, for months, requested copies of the entire Master Lease and
9 all agreements between Industry and San Gabriel WP pursuant to Public Records Act
10 requests.

11 151. At its October 12, 2017 meeting, the lone Councilmember who
12 spoke was Councilmember Newell Ruggles, whose frustration boiled over because he
13 knew as little about Industry's plans for Tres Hermanos as the general public, and the
14 following dialogue occurred that involved Mr. Philips, the City Manager:

15 Councilmember Ruggles: This lease – we've been working with
16 San Gabriel Valley Water and Power for over a year now? I have
17 not . . . received any updates of the scope of the project. I haven't
18 seen any plans, I haven't seen rendering, layouts, cost analysis,
19 nothing on paper. Just every time you talk to us, you say, oh, we
20 need more money, we need more money. Now we're at \$20
million, taxpayer dollars. I haven't seen anything. Why should
we continue on with this project? And we're being kept in the dark
by city staff.

21 Philips: . . . we don't have any preliminary data . . .

22 Councilmember Ruggles: I've learned more about this project in
newspapers than I've learned at Council meetings.

23 Philips: That's true, but they're crafting it in a different way and
in a different light. . .

24 Councilmember Ruggles: So you think it's fiduciary to keep
amending, \$20 million, and not telling anything about the project?

25 Philips: . . . as long as the billings are justified and go through the
Council

26 Councilmember Ruggles: So I have to make a records request to
27 get that information?
28

1 152. The City Council then voted 4-0 to approve the Master Lease, with
2 Councilmember Ruggles abstaining.

3
4 **PROCEDURAL ALLEGATIONS**

5 153. Diamond Bar has exhausted all available administrative remedies
6 required to be pursued by it.

7 154. Diamond Bar has no plain, speedy and adequate remedy in the
8 ordinary course of law, other than the relief sought in this Petition, that will prevent
9 Industry, the City Council, the Successor Agency, the Successor Agency Board and the
10 Oversight Board from acting outside their legal authority. Diamond Bar has a beneficial
11 interest in the outcome in this action and has performed all conditions precedent to the
12 filing of this Petition, including mailing of the formal written notice attached hereto as
13 Exhibit 1 and incorporated herein by this reference.

14
15 **FIRST CAUSE OF ACTION**

16 **(Writ of Mandate – Violation of CEQA Relating to Failure to Conduct**
17 **Environmental Review With Respect to Master Lease – Against Industry and**
18 **Industry City Council)**

19 155. Diamond Bar repeats and realleges paragraphs 1 through 154, above,
20 and incorporates them herein by this reference as though set forth in full.

21 156. The State Office of Planning and Research has promulgated
22 guidelines to implement CEQA. 14 Cal. Code Regs. §§ 15000 et seq. (the "Guidelines").

23 157. Diamond Bar is informed and believes, and thereon alleges, that
24 Industry and the City Council did not carry out environmental review under CEQA or
25 certify or adopt a CEQA document with respect to the Master Lease prior to the City
26 Council's approval of the Master Lease.

27 158. CEQA generally applies to "discretionary projects proposed to be
28 carried out or approved by public agencies" Cal. Pub. Res. Code § 21080(a). Before

1 granting any approval of a project subject to CEQA, every lead agency or responsible
2 agency shall consider a final EIR or negative declaration. Guidelines § 15004(a).

3 159. The appropriate CEQA document should be prepared "as early as
4 feasible in the planning process to enable environmental considerations to influence
5 project program and design and yet late enough to provide meaningful information for
6 environmental assessment." Guidelines § 15004(b).

7 160. Under CEQA, a "project" means "an activity which may cause either
8 a direct physical change in the environment, or a reasonably foreseeable indirect physical
9 change in the environment, and which is any of the following: (a) [a]n activity directly
10 undertaken by any public agency" or "(c) [a]n activity that involves the issuance to a
11 person of a lease, permit or other entitlement for use by one of more public agencies." Cal.
12 Pub. Res. Code § 21065; see also Guidelines § 15378(a). The term "project" refers to the
13 activity which is being approved and which may be subject to several discretionary
14 approvals by governmental agencies. The term "project" does not mean each separate
15 governmental approval. Guidelines § 15378(c).

16 161. The "approval" of a project is a decision by a public agency which
17 commits the agency to a definite course of action in regard to a project. Legislative action
18 in regard to a project often constitutes approval. Guidelines § 15352(a). With private
19 projects, approval occurs upon the earliest commitment to issue or the issuance by the
20 public agency of a discretionary contract, grant, subsidy, loan, or other form of entitlement
21 for use of the project. Guidelines § 15352(b).

22 162. Based on the statutory provisions and guidelines set forth in the five
23 preceding paragraphs, the City Council's approval of the Master Lease constituted the
24 "approval" of a "project", as follows:

25 a. The City Council is the legislative body of Industry, and it
26 approved the Master Lease, which includes the Original Master Lease and all of the Master
27 Lease Amendments, which constitute discretionary actions.

1 b. The City Council's approval of the Master Lease may cause
2 either a direct physical change or a reasonably foreseeable indirect physical change in the
3 environment, as follows:

4 i. The Master Lease (A) authorizes the development of a
5 photovoltaic solar project on Tres Hermanos and other portions of the Total Site with an
6 aggregate of at least 450 megawatts of rated annual output, (B) authorizes project leases
7 with terms of up to 65 years to facilitate the development of solar projects, (C) states that
8 Industry's right to terminate the Master Lease expires upon completion of one or more
9 solar photovoltaic projects that produce an aggregate of at least 50 megawatts per year, (D)
10 requires that, if Industry approves a solar project, it shall contribute 50% of the required
11 capital expenditures (net of indebtedness), construct and pay for required infrastructure and
12 pay for 50% of cost overruns, and (E) requires Industry to reimburse San Gabriel WP for
13 its pre-development costs for solar projects in the maximum aggregate amount of
14 **\$20 million.**

15 ii. Diamond Bar is informed and believes, and thereon
16 alleges, that at the time the City Council approved the Master Lease, there was meaningful
17 information available regarding the planned solar project sufficient to permit
18 environmental review under CEQA, as follows:

19 iii. The Industry Consultants and the San Gabriel
20 Consultants (collectively, the "Tres Hermanos Consultants") were retained to design and
21 engineer, and prepare studies, plans and other project documents, conduct environmental
22 review and provide legal advice with regard to, the planned solar project on Tres
23 Hermanos. Some of the Tres Hermanos Consultants began work on the solar project no
24 later than April 2016 and most or all of them commenced work by March 2017. For that
25 work, those consultants have billed at least approximately **\$12.6 million**, which does not
26 include work performed by the San Gabriel Consultants after April 2017. Diamond Bar is
27 informed and believes, and thereon alleges, that those consultants prepared detailed plans,
28 studies and other documentation regarding the planned solar project that provide sufficient

1 information to permit environmental review of the solar project prior to the approval of the
2 Master Lease by the Industry City Council.

3 iv. Diamond Bar is informed and believes, and thereon
4 alleges, that not only have the Tres Hermanos Consultants prepared significant project
5 documents and information that permit the preparation of draft EIR, but a draft EIR has
6 already been prepared or is close to completion. Helix Environmental Planning was
7 retained to prepare a draft EIR for the Tres Hermanos solar project in or around October
8 2016, submitted invoices for that work in the aggregate amount of \$1,222,643 by April
9 2017, and in a February 2017 invoice that a "final draft" of the draft EIR should be
10 prepared by the end of March 2017. In addition, (1) Ambient Communities began to
11 submit invoices no later than June 2016, and its responsibilities include the "total
12 environmental process," including "EIR completion," (2) Kimley Horn began to submit
13 invoices no later than November 2016, and its responsibilities include a range of
14 environmental and biological services and geotechnical analysis "(including CEQA)", (3)
15 the Downey Brand law firm began to submit invoices no later than June 2016, and its
16 responsibilities include "land use and EIR," and (4) Diamond Bar is informed and believes,
17 and thereon alleges, that several other Tres Hermanos Consultants were retained in part to
18 assist with the preparation of the draft EIR.

19 v. Diamond Bar is informed and believes, and thereon
20 alleges, that Industry had access to all of the project documents prepared by the Tres
21 Hermanos Consultants.

22 c. The City Council's approval of the Master Lease, viewed in
23 light of all the surrounding circumstances, committed Industry to a definite course of
24 action, as follows:

25 i. Diamond Bar is informed and believes, and thereon
26 alleges, that (A) in or around early 2015, Industry decided that it wanted to acquire Tres
27 Hermanos in order to develop a large solar facility on the property, and (B) for that reason,
28 the Successor Agency (which is the alter ego of Industry) refused to respond to or

1 acknowledge GH America's repeated offers to purchase Tres Hermanos for \$101-108
2 million for residential development.

3 ii. In or around April 2016, prior to the execution of the
4 Original Master Lease, Industry and San Gabriel WP covertly assembled and put to work
5 the Tres Hermanos Consultants to design and engineer, and prepare studies, plans and
6 project documents, conduct environmental review and provide legal advice with regard to,
7 the planned solar project. Diamond Bar is informed and believes, and thereon alleges, that
8 (A) Industry has reimbursed San Gabriel WP the minimum amount of approximately
9 **\$8,803,123** for the collective services of the San Gabriel Consultants from April 1, 2016
10 through in or around April 2017 with respect to the solar project, and (B) Industry paid the
11 Industry Consultants the minimum amount of approximately **\$3,848,516** for their
12 collective services from April 1, 2016 through in or around September 2017 relating to the
13 solar project.

14 iii. In November 2016, a San Gabriel WP attorney prepared
15 the draft Power Purchase Agreement, pursuant to which SGV Solar ProjectCo 1, LLC,
16 which Diamond Bar is informed and believes, and thereon alleges, is affiliated with San
17 Gabriel WP, would agree to develop, construct, own, operate and maintain a solar
18 photovoltaic electric generation facility with a designed output of 135 megawatts on Tres
19 Hermanos, and to sell the electricity produced by the solar facility to the IPUC.

20 iv. Industry and the Successor Agency manipulated the
21 appraisal and sale processes to allow Industry to purchase Tres Hermanos from the
22 Successor Agency for only \$41.65 million, when its fair market value is at least \$100
23 million, in order to provide additional funds to develop the planned solar project, as Paul
24 Philips stated at the August 24, 2017 Oversight Board meeting.

25 v. The City Council, the Successor Agency Board and the
26 Oversight Board all approved the Final Tres Hermanos PSA, with a purchase price of
27 \$41.65 million.
28

1 d. Diamond Bar is informed and believes, and thereon alleges,
2 that Industry and the Successor Agency rigorously concealed the existence of the planned
3 solar project and the many steps they have taken to move the solar project forward, in part
4 to avoid CEQA review for the solar project prior to the approval of the Master Lease, as
5 follows:

6 i. The City Council did not approve the Original Master
7 Lease or any of the Master Lease Amendments in open session at a public meeting prior to
8 October 12, 2017, and never otherwise disclosed the existence of the Original Master
9 Lease to the public or governmental authorities until it provided drafts of that document to
10 Chino Hills in response to Public Records Act requests, and even then did not provide to
11 Chino Hills (A) a copy of the complete, final Original Master Lease or (B) copies of any of
12 the Master Lease Amendments.

13 ii. Industry and Successor Agency officials (who are the
14 same individuals with different titles) repeatedly indicated or suggested that Tres
15 Hermanos would be used solely for open space and recreational purposes, while Industry
16 was spending millions of dollars to cause the development of a major solar facility.

17 iii. Industry and Successor Agency officials concealed the
18 existence of the planned solar project from the Oversight Board and, when its existence
19 was revealed, failed to provide any documentation or information to the Oversight Board
20 regarding the solar project.

21 iv. Industry officials refused and/or failed to provide
22 meaningful documentation or information regarding the planned solar project to at least
23 some of the Industry City Councilmembers, to the point that Councilmember Ruggles
24 (who is also a member of the Successor Agency Board) publicly stated at the City Council
25 meeting on October 12, 2017 that "I haven't seen any plans, I haven't seen rendering,
26 layouts, cost analysis, nothing on paper," and asked aloud whether he had to file a Public
27 Records Act request to obtain any meaningful information regarding the solar project.
28

1 v. Industry officials omitted all of the invoices from the
2 San Gabriel Consultants from the monthly "register of demands" it provided to, and
3 approved by, the City Council.

4 vi. When Industry belatedly requested general plan
5 conformity review from Diamond Bar and Chino Hills in early September 2017, it still
6 refused to state the specific and primary purpose of the acquisition – the development of a
7 major solar project – and once again obscured its plans by vaguely stating that it was
8 acquiring the property "for open space, preservation, public facility or other public
9 purposes" When both cities pushed back and requested information regarding the
10 specific purpose of the acquisition, Industry aggressively responded that neither city had
11 any right to "demand details of the purpose" and still refused to acknowledge the existence
12 of the planned solar project.

13 vii. Despite numerous Public Records Act request submitted
14 by Diamond Bar and Chino Hills to Industry requesting all documents relating to the
15 planned solar project, neither Diamond Bar nor Chino Hills has received any documents
16 relating to the design, engineering, layout or schedule for the project (other than copies of
17 invoices and consultant proposals and lists) or any plans, graphics, reports, studies or
18 environmental documents prepared in connection with the project.

19 163. For these reasons, Industry and the City Council failed to carry out the
20 environmental review and certify or adopt a CEQA document with respect to the Master
21 Lease that is mandated by CEQA and the Guidelines.

22 164. The failure of Industry and the Industry City Council to carry out
23 environmental review under CEQA and certify or adopt a CEQA document with respect to
24 the Master Lease prior to the City Council's approval of the Master lease constituted a
25 prejudicial abuse of discretion because Industry and the City Council failed to proceed in
26 the manner required by law.

27 WHEREFORE, Diamond Bar prays for relief as set forth below.
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SECOND CAUSE OF ACTION
(Writ of Mandate – Violation of CEQA Relating to Failure to Conduct
Environmental Review With Respect to Final Tres Hermanos PSA – Against
Successor Agency, Successor Agency Board and Oversight Board)

165. Diamond Bar repeats and realleges paragraphs 1 through 154 and 156 through 161, above, and incorporates them herein by this reference as though set forth in full.

166. The Oversight Board did not carry out any environmental review under CEQA or certify or adopt a CEQA document with respect to the Final Tres Hermanos PSA prior to its approval of the Final Tres Hermanos PSA.

167. The Successor Agency and the Successor Agency Board did not carry out any environmental review under CEQA or certify or adopt a CEQA document with respect to the Final Tres Hermanos PSA prior to the Successor Agency Board's approval of the Final Tres Hermanos PSA.

168. Based on the statutory provisions and guidelines set forth in paragraphs 156 through 161, above, the approval of the Final Tres Hermanos PSA by the Oversight Board and the Successor Agency Board each constituted the discretionary "approval" of a "project", as follows:

a. The approval of the Final Tres Hermanos PSA by the Oversight Board and the Successor Agency Board may cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment, as follows:

i. Industry seeks to acquire Tres Hermanos for the development of a large solar facility on the property.

ii. Diamond Bar is informed and believes, and thereon alleges, that at the time the Oversight Board and the Successor Agency Board approved the Final Tres Hermanos PSA in August-September 2017, there was meaningful information

1 available regarding the planned solar project to permit environmental review under CEQA,
2 as follows:

3 A. The Tres Hermanos Consultants were retained to
4 design and engineer, and prepare studies, plans and other project documents, conduct
5 environmental review and provide legal advice with regard to, the planned solar project on
6 Tres Hermanos. Some of the Tres Hermanos Consultants began work on the solar project
7 no later than April 2016 and most or all of them commenced work by March 2017. For
8 that work, those consultants have billed at least approximately **\$12.6 million**, which does
9 not include work performed by the San Gabriel Consultants after April 2017. Diamond
10 Bar is informed and believes, and thereon alleges, that those consultants prepared detailed
11 plans, studies and other documentation regarding the planned solar project that provide
12 sufficient information to permit environmental review of the solar project prior to the
13 approval of the Final Tres Hermanos PSA by the Oversight Board and the Successor
14 Agency Board.

15 B. Diamond Bar is informed and believes, and
16 thereon alleges, that not only have the Tres Hermanos Consultants prepared significant
17 project documents and information that permit the preparation of draft EIR, but a draft EIR
18 has already been prepared or is close to completion. Helix Environmental Planning was
19 retained to prepare a draft EIR for the Tres Hermanos solar project in or around October
20 2016, submitted invoices for that work in the aggregate amount of **\$1,222,643** by April
21 2017, and in a February 2017 invoice that a "final draft" of the draft EIR should be
22 prepared by the end of March 2017. In addition, (1) Ambient Communities began to
23 submit invoices no later than June 2016, and its responsibilities include the "total
24 environmental process," including "EIR completion," (2) Kimley Horn began to submit
25 invoices no later than November 2016, and its responsibilities include a range of
26 environmental and biological services and geotechnical analysis "(including CEQA)", (3)
27 the Downey Brand law firm began to submit invoices no later than June 2016, and its
28 responsibilities include "land use and EIR," and (4) Diamond Bar is informed and believes,

1 and thereon alleges, that several other Tres Hermanos Consultants were retained in part to
2 assist with the preparation of the draft EIR.

3 C. Diamond Bar is informed and believes, and
4 thereon alleges, that the Successor Agency had access to all of the project documents
5 prepared by the Tres Hermanos Consultants and was obligated to make those documents
6 available to the Oversight Board.

7 b. The approval of the Final Tres Hermanos PSA by the
8 Oversight Board and the Successor Agency Board, viewed in light of all the surrounding
9 circumstances, committed the Successor Agency and the Oversight Board to a definite
10 course of action, as follows:

11 i. Diamond Bar is informed and believes, and thereon
12 alleges, that (A) in or around early 2015, Industry decided that it wanted to acquire Tres
13 Hermanos in order to develop a large solar facility on the property, and (B) for that reason,
14 the Successor Agency (which is the alter ego of Industry) refused to respond to or
15 acknowledge GH America's repeated offers to purchase Tres Hermanos for \$101-108
16 million for residential development.

17 ii. In or around April 2016, prior to the execution of the
18 Original Master Lease, Industry and San Gabriel WP covertly assembled and put to work
19 the Tres Hermanos Consultants to design and engineer, and prepare studies, plans and
20 project documents, conduct environmental review and provide legal advice with regard to,
21 the planned solar project. Diamond Bar is informed and believes, and thereon alleges, that
22 (A) Industry has reimbursed San Gabriel WP the minimum amount of approximately
23 **\$8,803,123** for the collective services of the San Gabriel Consultants from April 1, 2016
24 through in or around April 2017 with respect to the solar project, and (B) Industry paid the
25 Industry Consultants the minimum amount of approximately **\$3,848,516** for their
26 collective services from April 1, 2016 through in or around September 2017 relating to the
27 solar project.
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1 iii. In May 2016 (approximately 15-16 months before the
2 Oversight Board and the Successor Agency Board approved the Final Tres Hermanos
3 PSA), the Industry City Council (whose members also comprise the Successor Agency
4 Board) purported to approve the Original Master Lease, which, as amended, (A) authorizes
5 the development of a photovoltaic solar project on Tres Hermanos and other portions of
6 the Total Site with an aggregate of at least 450 megawatts of rated annual output, (B)
7 authorizes project leases with terms of up to 65 years to facilitate the development of solar
8 projects, (C) states that Industry's right to terminate the Master Lease expires upon
9 completion of one or more solar photovoltaic projects that produce an aggregate of at least
10 50 megawatts per year, (D) requires that, if Industry approves a solar project, it shall
11 contribute 50% of the required capital expenditures (net of indebtedness), construct and
12 pay for required infrastructure and pay for 50% of cost overruns, and (E) requires Industry
13 to reimburse San Gabriel WP for its pre-development costs for solar projects in the
14 maximum aggregate amount of **\$20 million**. The City Council also purported to approve
15 all four of the Master Lease Amendments prior to the approval of the Final Tres Hermanos
16 PSA by the Oversight Board and the Successor Agency Board.

17 iv. In November 2016, a San Gabriel WP attorney prepared
18 the draft Power Purchase Agreement, pursuant to which SGV Solar ProjectCo 1, LLC,
19 which Diamond Bar is informed and believes, and thereon alleges, is affiliated with San
20 Gabriel WP, would agree to develop, construct, own, operate and maintain a solar
21 photovoltaic electric generation facility with a designed output of 135 megawatts on Tres
22 Hermanos, and to sell the electricity produced by the solar facility to the IPUC.

23 v. Industry and the Successor Agency manipulated the
24 appraisal and sale processes to allow Industry to purchase Tres Hermanos from the
25 Successor Agency for only \$41.65 million, when its fair market value is at least
26 \$100 million, in order to provide additional funds to develop the planned solar project, as
27 Paul Philips stated at the August 24, 2017 Oversight Board meeting.
28

1 vi. The Successor Agency Board, the Oversight Board and
2 the Industry City Council all approved the Final Tres Hermanos PSA, with a purchase
3 price of \$41.65 million.

4 c. Diamond Bar is informed and believes, and thereon alleges,
5 that the Successor Agency and Industry rigorously concealed the existence of the planned
6 solar project and the many steps they have taken to move the solar project forward, in part
7 to avoid CEQA review for the solar project prior to the transfer of Tres Hermanos from the
8 Successor Agency to Industry, as follows:

9 i. The City Council did not approve the Original Master
10 Lease or any of the Master Lease Amendments in open session at a public meeting prior to
11 October 12, 2017, and never otherwise disclosed the existence of the Original Master
12 Lease to the public or governmental authorities until it provided drafts of that document to
13 Chino Hills in response to Public Records Act requests, and even then did not provide to
14 Chino Hills (A) a copy of the complete, final Original Master Lease or (B) copies of any of
15 the Master Lease Amendments.

16 ii. Industry and Successor Agency officials (who are the
17 same individuals with different titles) constantly repeatedly indicated or suggested that
18 Tres Hermanos would be used solely for open space and recreational purposes, while
19 Industry was spending millions of dollars to cause the development of a major solar
20 facility.

21 iii. Industry and Successor Agency officials concealed the
22 existence of the planned solar project from the Oversight Board and, when its existence
23 was revealed, failed to provide any documentation or information to the Oversight Board
24 regarding the solar project.

25 v. Industry officials refused and/or failed to provide
26 meaningful documentation or information regarding the planned solar project to at least
27 some of the Industry City Councilmembers, to the point that Councilmember Ruggles
28 (who is also a member of the Successor Agency Board) publicly stated at the City Council

1 meeting on October 12, 2017 that "I haven't seen any plans, I haven't seen rendering,
2 layouts, cost analysis, nothing on paper," and asked aloud whether he had to file a Public
3 Records Act request to obtain any meaningful information regarding the solar project.

4 vi. Industry officials omitted all of the invoices from the
5 San Gabriel Consultants from the monthly "register of demands" it provided to, and
6 approved by, the City Council.

7 vii. When Industry belatedly requested general plan
8 conformity review from Diamond Bar and Chino Hills in early September 2017, it still
9 refused to state the specific and primary purpose of the acquisition – the development of a
10 major solar project – and once again obscured its plans by vaguely stating that it was
11 acquiring the property "for open space, preservation, public facility or other public
12 purposes" When both cities pushed back and requested information regarding the
13 specific purpose of the acquisition, Industry aggressively responded that neither city had
14 any right to "demand details of the purpose" and still refused to acknowledge the existence
15 of the planned solar project.

16 169. For these reasons, the Successor Agency, the Successor Agency
17 Board and the Oversight Board failed to carry out the environmental review and certify or
18 adopt a CEQA document with respect to the Final Tres Hermanos PSA that is mandated by
19 CEQA and the Guidelines.

20 170. The failure of the Successor Agency, the Successor Agency Board
21 and the Oversight Board to carry out environmental review under CEQA and certify or
22 adopt a CEQA document with respect to the Final Tres Hermanos PSA prior to approval of
23 the Final Tres Hermanos PSA by the Oversight Board and the Successor Agency Board
24 constituted a prejudicial abuse of discretion because the Oversight Board, the Successor
25 Agency and the Successor Agency Board failed to proceed in the manner required by law.

26 WHEREFORE, Diamond Bar prays for relief as set forth below.
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THIRD CAUSE OF ACTION
(Writ of Mandate – Violation of CEQA Relating to Failure to Conduct
Environmental Review With Respect to Final Tres Hermanos PSA – Against
Industry and Industry City Council)

171. Diamond Bar repeats and realleges paragraphs 1 through 154 and 156 through 161, above, and incorporate them herein by this reference as though set forth in full.

172. Industry and the Industry City Council did not carry out any environmental review under CEQA or certify or adopt a CEQA document with respect to the Final Tres Hermanos PSA prior to its approval by the City Council.

173. Based on the statutory provisions and guidelines set forth in paragraphs 156 through 161, above, the City Council's approval of the Final Tres Romano's PSA constituted the discretionary "approval" of a "project", as follows:

a. The City Council is the legislative body of Industry and it approved the Final Tres Hermanos PSA.

b. The City Council's approval of the Final Tres Hermanos PSA may cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment, as follows:

i. Diamond Bar is informed and believes, and thereon alleges, that Industry seeks to acquire Tres Hermanos for the development of a large solar facility on the property.

ii. Diamond Bar is informed and believes, and thereon alleges, that at the time the City Council approved the Final Tres Hermanos PSA on September 28, 2017, there was meaningful information available regarding the planned solar project to permit environmental review under CEQA, as follows:

iii. The Tres Hermanos Consultants were retained to design and engineer, and prepare studies, plans and other project documents, conduct environmental review and provide legal advice with regard to, the planned solar project on

1 Tres Hermanos. Some of the Tres Hermanos Consultants began work on the solar project
2 no later than April 2016 and most or all of them commenced work by March 2017. For
3 that work, those consultants have billed at least approximately **\$12.6 million**, which does
4 not include work performed by the San Gabriel Consultants after April 2017. Diamond
5 Bar is informed and believes, and thereon alleges, that those consultants prepared detailed
6 plans, studies and other documentation regarding the planned solar project that provide
7 sufficient information to permit environmental review of the solar project prior to the City
8 Council's approval of the Final Tres Hermanos PSA.

9 iv. Diamond Bar is informed and believes, and thereon
10 alleges, that not only have the Tres Hermanos Consultants prepared significant project
11 documents and information that permit the preparation of draft EIR, but a draft EIR has
12 already been prepared or is close to completion. Helix Environmental Planning was
13 retained to prepare a draft EIR for the Tres Hermanos solar project in or around October
14 2016, submitted invoices for that work in the aggregate amount of **\$1,222,643** by April
15 2017, and in a February 2017 invoice that a "final draft" of the draft EIR should be
16 prepared by the end of March 2017. In addition, (1) Ambient Communities began to
17 submit invoices no later than June 2016, and its responsibilities include the "total
18 environmental process," including "EIR completion," (2) Kimley Horn began to submit
19 invoices no later than November 2016, and its responsibilities include a range of
20 environmental and biological services and geotechnical analysis "(including CEQA)", (3)
21 the Downey Brand law firm began to submit invoices no later than June 2016, and its
22 responsibilities include "land use and EIR," and (4) Diamond Bar is informed and believes,
23 and thereon alleges, that several other Tres Hermanos Consultants were retained in part to
24 assist with the preparation of the draft EIR.

25 v. Diamond Bar is informed and believes, and thereon
26 alleges, that Industry had access to all of the project documents prepared by the Tres
27 Hermanos Consultants.
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1 c. The City Council's approval of the Final Tres Hermanos PSA,
2 viewed in light of all the surrounding circumstances, committed the Successor Agency and
3 the Oversight Board to a definite course of action, as follows:

4 i. Diamond Bar is informed and believes, and thereon
5 alleges, that (A) in or around early 2015, Industry decided that it wanted to acquire Tres
6 Hermanos in order to develop a large solar facility on the property, and (B) for that reason,
7 the Successor Agency (which is the alter ego of Industry) refused to respond to or
8 acknowledge GH America's repeated offers to purchase Tres Hermanos for
9 \$101-108 million for residential development.

10 ii. In or around April 2016, prior to the execution of the
11 Original Master Lease, Industry and San Gabriel WP covertly assembled and put to work
12 the Tres Hermanos Consultants to design and engineer and prepare studies, plans and
13 project documents, conduct environmental review and provide legal advice with regard to,
14 the planned solar project. Diamond Bar is informed and believes, and thereon alleges, that
15 (A) Industry has reimbursed San Gabriel WP the minimum amount of approximately
16 **\$8,803,123** for the collective services of the San Gabriel Consultants from April 1, 2016
17 through in or around April 2017 with respect to the solar project, and (B) Industry paid the
18 Industry Consultants the minimum amount of approximately **\$3,848,516** for their
19 collective services from April 1, 2016 through in or around September 2017 relating to the
20 solar project.

21 iii. In May 2016 (approximately 15-16 months before the
22 Oversight Board and the Successor Agency Board approved and ratified the Final Tres
23 Hermanos PSA), the Industry City Council purported to approve the Original Master
24 Lease, which, as amended, (A) authorizes the development of a photovoltaic solar project
25 on Tres Hermanos and other portions of the Total Site with an aggregate of at least 450
26 megawatts of rated annual output, (B) authorizes project leases with terms of up to 65
27 years to facilitate the development of solar projects, (C) states that Industry's right to
28 terminate the Master Lease expires upon completion of one or more solar photovoltaic

1 projects that produce an aggregate of at least 50 megawatts per year, (D) requires that, if
2 Industry approves a solar project, it shall contribute 50% of the required capital
3 expenditures (net of indebtedness), construct and pay for required infrastructure and pay
4 for 50% of cost overruns, and (E) requires Industry to reimburse San Gabriel WP for its
5 pre-development costs for solar projects in the maximum aggregate amount of
6 **\$20 million**. The City Council also purported to approve all four of the Master Lease
7 Amendments prior to the approval and ratification of the Final Tres Hermanos PSA by the
8 Oversight Board and the Successor Agency Board.

9 iv. In November 2016, a San Gabriel WP attorney prepared
10 the draft Power Purchase Agreement, pursuant to which SGV Solar ProjectCo 1, LLC,
11 which Diamond Bar is informed and believes, and thereon alleges, is affiliated with San
12 Gabriel WP, would agree to develop, construct, own, operate and maintain a solar
13 photovoltaic electric generation facility with a designed output of 135 megawatts on Tres
14 Hermanos, and to sell the electricity produced by the solar facility to the IPUC.

15 v. Industry and the Successor Agency manipulated the
16 appraisal and sale processes to allow Industry to purchase Tres Hermanos from the
17 Successor Agency for only \$41.65 million, when its fair market value is at least \$100
18 million, in order to provide additional funds to develop the planned solar project, as Paul
19 Philips stated at the August 24, 2017 Oversight Board meeting.

20 vi. The Successor Agency Board, the Oversight Board and
21 the City Council all approved the Final Tres Hermanos PSA, with a purchase price of
22 \$41.65 million.

23 d. Diamond Bar is informed and believes, and thereon alleges,
24 that the Successor Agency and Industry rigorously concealed the existence of the planned
25 solar project and the many steps they have taken to move the solar project forward, in part
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1 to avoid CEQA review for the solar project prior to the transfer of Tres Hermanos from the
2 Successor Agency to Industry, as follows:

3 i. The City Council did not approve the Original Master
4 Lease or any of the Master Lease Amendments in open session at a public meeting prior to
5 October 12, 2017, and never otherwise disclosed the existence of the Original Master
6 Lease to the public or governmental authorities until it provided drafts of that document to
7 Chino Hills in response to Public Records Act requests, and even then did not provide to
8 Chino Hills (A) a copy of the complete, final Original Master Lease or (B) copies of any of
9 the Master Lease Amendments.

10 ii. Industry and Successor Agency officials (who are the
11 same individuals with different titles) repeatedly indicated or suggested that Tres
12 Hermanos would be used solely for open space and recreational purposes, while Industry
13 was spending millions of dollars to cause the development of a major solar facility.

14 iii. Industry and Successor Agency officials concealed the
15 existence of the planned solar project from the Oversight Board and, when its existence
16 was revealed, failed to provide any documentation or information to the Oversight Board
17 regarding the solar project.

18 iv. Industry officials refused and/or failed to provide
19 meaningful documentation or information regarding the planned solar project to at least
20 some of the Industry City Councilmembers, to the point that Councilmember Ruggles
21 (who is also a member of the Successor Agency Board) publicly stated at the City Council
22 meeting on October 12, 2017 that "I haven't seen any plans, I haven't seen rendering,
23 layouts, cost analysis, nothing on paper," and asked aloud whether he had to file a Public
24 Records Act request to obtain any meaningful information regarding the solar project.

25 v. Industry officials omitted all of the invoices from the
26 San Gabriel Consultants from the monthly "register of demands" it provided to, and
27 approved by, the City Council.
28

1 vi. When Industry belatedly requested the general plan
2 conformity review from Diamond Bar and Chino Hills in early September 2017, it still
3 refused to state the specific and primary purpose of the acquisition – the development of a
4 major solar project – and once again obscured its plans by vaguely stating that it was
5 acquiring the property "for open space, preservation, public facility or other public
6 purposes" When both cities pushed back and requested information regarding the
7 specific purpose of the acquisition, Industry aggressively responded that neither city had
8 any right to "demand details of the purpose" and still refused to acknowledge the existence
9 of the planned solar project.

10 vii. Despite numerous Public Records Act request submitted
11 by Diamond Bar and Chino Hills to Industry requesting all documents relating to the
12 planned solar project, neither Diamond Bar nor Chino Hills has received any documents
13 relating to the design, engineering, layout or schedule for the project (other than copies of
14 invoices and consultant proposals and lists) or any plans, graphics, reports, studies or
15 environmental documents prepared in connection with the project.

16 174. For these reasons, Industry and the Industry City Council failed to
17 carry out the environmental review with respect to the Final Tres Hermanos PSA that is
18 mandated by CEQA and the Guidelines.

19 175. The failure of Industry and the City Council to carry out
20 environmental review under CEQA with respect to the Final Tres Hermanos PSA prior to
21 the City Council's approval of the Final Tres Hermanos PSA constituted a prejudicial
22 abuse of discretion because Industry and the City Council failed to proceed in the manner
23 required by law.

24 WHEREFORE, Diamond Bar prays for relief as set forth below.
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1 **FOURTH CAUSE OF ACTION**

2 **(Writ of Mandate – Violation of Government Code Section 65402(b) – Failure to**
3 **Obtain a Report as to General Plan Conformity – Against Industry**
4 **and Industry City Council)**

5 176. Diamond Bar repeats and realleges paragraphs 1 through 154, above,
6 and incorporates them herein by this reference as though set forth in full.

7 177. Government Code Section 65402(b) provides in relevant part:

8 . . . a city shall not acquire real property [for street, square,
9 park or other public purposes] . . ., nor construct or authorize a
10 public building or structure, in another city .., if such other
11 city . . . has adopted a general plan or part thereof and such
12 general plan or part thereof is applicable thereto, until the
13 location, purpose and extent of such acquisition, disposition, or
such public building or structure have been submitted to and
reported upon by the planning agency having jurisdiction, as to
conformity with said adopted general plan or part thereof.

14 178. The Industry City Council's approval of both the \$100 Million Tres
15 Hermanos PSA and the Final Tres Hermanos PSA violated Section 65402(b), as follows:

16 a. Industry failed to submit to either Chino Hills or Diamond Bar
17 a request for general plan conformity review, as required by Government Code
18 Section 65402(b), prior to its approval of the \$100 Million Tres Hermanos PSA on January
19 13, 2017, which authorized the acquisition of Tres Hermanos.

20 b. In a February 6, 2017 letter from the Chino Hills City Council
21 to Sean Varner, General Counsel for the Oversight Board, the City Council requested that
22 Industry initiate and obtain a general plan conformity determination from the Chino Hills
23 Planning Commission pursuant to Section 65402(b).

24 c. In an August 24, 2017 letter from Konradt Bartlam, the Chino
25 Hills City Manager, to the Oversight Board, Mr. Bartlam reiterated that Industry had failed
26 to seek a general plan conformity finding from either Chino Hills or Diamond Bar.

27 d. In an August 24, 2017 letter from Mr. DeBerry, the Diamond
28 Bar City Attorney, Mr. DeBerry stated that the Oversight Board could not approve the

1 \$100 Million Tres Hermanos PSA because Industry had not previously submitted a request
2 to either Diamond Bar or Chino Hills for a general plan conformity finding pursuant to
3 Section 65402(b), which request must include the "purpose" of the acquisition.

4 e. Industry failed to submit to either Diamond Bar or Chino Hills
5 a request for general plan conformity review, as required by Section 65402(b), prior to the
6 Oversight Board's approval of the Final Tres Hermanos PSA on August 24, 2017.

7 f. Industry belatedly requested general plan conformity review
8 from Diamond Bar and Chino Hills on September 1, 2017, but Industry still refused to
9 state the specific and primary purpose of the acquisition – the development of a major
10 solar project – and once again obscured its plans by vaguely stating that it was acquiring
11 the property "for open space, preservation, public facility or other public purposes"
12 When both cities pushed back and requested information regarding the specific purpose of
13 the acquisition, Industry aggressively responded that neither city had any right to "demand
14 details of the purpose" and again refused to acknowledge the existence of the planned solar
15 project.

16 g. After Industry declared its intention to approve the Final Tres
17 Hermanos PSA on September 28, 2017, both Mr. Hensley, the Chino Hills City Attorney,
18 and Mr. DeBerry, the Diamond Bar City Attorney, submitted September 27, 2017 letters to
19 the Industry City Council and the Successor Agency Board stating, in part, that neither the
20 City Council nor the Successor Agency Board could approve the Final Tres Hermanos
21 PSA until Industry requested general plan conformity review pursuant to Section 65402(b)
22 and the review was completed.

23 h. On October 9, 2017, the Chino Hills Planning Commission
24 adopted a resolution denying Industry's request under Section 65402(b) as incomplete
25 because (i) Industry had failed to specify the purpose for which it was acquiring Tres
26 Hermanos and (ii) it was untimely because the Final Tres Hermanos PSA had already been
27 approved by the Oversight Board on September 28.

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1 i. On October 10, 2017, the Diamond Bar Planning Commission
2 adopted a resolution denying Industry's request under Section 65402(b) because (a)
3 Industry had "not provided sufficient information pertaining to the purpose of the Proposed
4 Acquisition for the Planning Commission to determine whether or not the proposed
5 acquisition is in conformance with the General Plan," (b) Industry had made "material
6 misrepresentations to the Planning Commission" as to its plans for Tres Hermanos,
7 (c) Industry's application was untimely and did not comply with Section 65402(b) and (d)
8 because the application was incomplete, the 40-day period for the Planning Commission to
9 make a general plan conformance finding had not begun to run.

10 j. Industry failed to submit a complete request for general plan
11 conformity pursuant to Section 65402(b) to either Chino Hills or Diamond Bar regarding
12 Industry's approval of the acquisition of Tres Hermanos prior to the Industry City
13 Council's approval of the Final Tres Hermanos PSA on September 28, 2017.

14 k. The City Council approved the Final Tres Hermanos PSA on
15 September 28, 2017, well before the Chino Hills and Diamond Bar Planning Commission
16 considered and took action on October 9 and 10, 2017 with respect to Industry's requests
17 for general plan conformity review pursuant to Section 65402(b), which actions were taken
18 prior to the expiration of the 40-day review period in Section 65402(b).

19 l. Therefore, Industry failed to comply with the requirements of
20 Section 65402(b) prior to the City Council's approval of the Final Tres Hermanos PSA on
21 September 28, 2017.

22 179. The approval of the \$100 Million Tres Hermanos PSA by the City
23 Council on January 13, 2017 constituted a prejudicial abuse of discretion because Industry
24 failed to comply with the requirements of Section 65402(b), and the requirements of
25 Section 65402(b) were not otherwise satisfied, prior to such approval, and Industry and the
26 City Council thereby failed to proceed in the manner required by law.

27 180. The approval of the Final Tres Hermanos PSA by the Industry City
28 Council on September 28, 2017 constituted a prejudicial abuse of discretion because

1 Industry failed to comply with the requirements of Section 65402(b), and the requirements
2 of Section 65402(b) were not otherwise satisfied, prior to such approval, and Industry and
3 the City Council thereby failed to proceed in the manner required by law.

4 WHEREFORE, Diamond Bar prays for relief as set forth below.

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6 **FIFTH CAUSE OF ACTION**

7 **(Writ of Mandate – Illegal Gift of Public Funds Pursuant to Article XVI, Section 6 of**
8 **California Constitution – Against Oversight Board, Successor Agency**
9 **and Successor Agency Board)**

10 181. Diamond Bar repeats and realleges paragraphs 1 through 154, above,
11 and incorporates them herein by this reference as though set forth in full.

12 182. Article XVI, Section 6 of the California Constitution provides that,
13 with certain exceptions not relevant here,

14 [t]he Legislature shall have no power to give or to lend, or to
15 authorize the giving or lending, of the credit of the State, or of any
16 county, city and county, city, township or other political
17 corporation or subdivision of the State now existing, or that may
18 be hereafter established, in aid of or to any person, association, or
19 corporation, whether municipal or otherwise, or to pledge the
20 credit thereof, in any manner whatever, for the payment of the
21 liabilities of any individual, association, municipal or other
22 corporation whatever; nor shall it have power to make any gift or
23 authorize the making of any gift, of any public money or thing of
24 value to any individual, municipal or other corporation
25 whatever[.] Cal. Const., art. XVI, § 6.

26 183. Under Article XVI, Section 6, with respect to disposition of
27 property, the public agency must receive fair market value and, if the sale is at less than
28 fair market value, the reduced purchase price must further a purpose for which the selling
agency was formed. It is not sufficient that the sale further a public purpose; it must
further a public purpose for which the selling public agency was formed.

184. The Successor Agency is required to sell Tres Hermanos at a
reasonable price in a manner to maximize its value for the benefit of the taxing entities.

1 The function of the Oversight Board is, in part, to ensure that the Successor Agency sells
2 real property in a manner that furthers the purpose for which the Legislature created such
3 agencies. The deep discounting of the purchase price by the Oversight Board and
4 Successor Agency, based on an illusory restrictive covenant, did not further any purpose
5 for which the Successor Agency was formed. As acknowledged by Mr. Philips, the intent
6 of his motion and, ultimately, the Oversight Board's action, was to reduce the cost for
7 Industry to develop the Tres Hermanos solar project. The Successor Agency was not
8 created by the Legislature to assist in the development of solar projects; rather it was
9 created to maximize the value of Tres Hermanos. Therefore, it had no authority to sell
10 Tres Hermanos at a deeply discounted price.

11 185. Diamond Bar and the other taxing entities with respect to Tres
12 Hermanos are third party beneficiaries of any sale of Tres Hermanos and, as such, have a
13 beneficial interest in ensuring that (a) the Successor Agency sells Tres Hermanos for the
14 purposes for which the Successor Agency was formed (i.e., to maximize its value) and
15 (b) the Oversight Board ensure that the Successor Agency's action is consistent with this
16 purpose. By directing and approving a sale of Tres Hermanos at a price dramatically
17 below its fair market value, the Oversight Board and Successor Agency violated the
18 California Constitution's prohibition against making a gift of public funds by taking at least
19 approximately \$60 million in revenue belonging to the taxing entities and putting it in
20 Industry's pocket to help it develop the Tres Hermanos solar project.

21 186. The approval of the Final Tres Hermanos PSA by the Successor
22 Agency Board and the Oversight Board constituted a prejudicial abuse of discretion
23 because it resulted in an illegal gift of public funds to Industry pursuant to California
24 Constitution Article XVI, Section 6, and the Successor Agency, the Successor Agency
25 Board and the Oversight Board thereby failed to proceed in the manner required by law.

26 WHEREFORE, Diamond Bar prays for relief as set forth below.
27
28

1 **SIXTH CAUSE OF ACTION**

2 **(Writ of Mandate – Violation of Brown Act – Against Oversight Board)**

3 187. Diamond Bar repeats and realleges paragraphs 1 through 154, above,
4 and incorporates them herein by this reference as though set forth in full.

5 188. The Brown Act (California Government Code §§ 54950 et seq.)
6 requires, among other things, that meetings of the Oversight Board must be "open and
7 public" (Section 54953), that agendas be posted prior to the meeting containing a "brief
8 general description of" any item to be discussed (Section 54954.2(a)(1)), that the public be
9 provided "an opportunity ... to directly address" the Oversight Board before or during its
10 consideration of any agenda item (Government Code § 54954.3(a)) and that no action or
11 discussion shall be undertaken on any item not appearing on the posted agenda
12 (Section 54954.2(a)(3)).

13 189. The August 24, 2017 meeting of the Oversight Board (previously
14 defined as the "August 24 Meeting") was a "special meeting," as defined in the Brown Act.
15 By calling a special meeting, the Oversight Board was able to provide the public with just
16 24 hours' notice of the business to be discussed, rather than the 72 hours' notice required
17 for a regular meeting. For special meetings, the "call and notice shall specify the time and
18 place of the special meeting and the business to be transacted or discussed." Unlike
19 regular meetings where business items may be added to the agenda if certain findings are
20 made, the Brown Act provides that "[n]o other business shall be considered at these
21 meetings by the legislative body." Cal. Gov't Code § 54956.

22 190. The Oversight Board's approval of the Final Tres Hermanos PSA
23 violated the preceding requirements, as follows:

24 a. Neither the agenda nor agenda materials for the August 24
25 Meeting provided the public with any clue as to the business ultimately discussed and
26 action ultimately taken by the Oversight Board. The agenda description for the business to
27 be transacted and discussed was to approve the 8/24/17 OB PSA Resolution, which was
28 part of the agenda materials and provided for the sale of Tres Hermanos to Industry for the

1 purchase price of \$100 million and further specified that a sale must be "aimed at
2 maximizing value." Instead, the business discussed, and the action taken at the meeting,
3 was to sell Tres Hermanos for \$41.65 million and minimize its value all so Industry could
4 have more cash for its solar project.

5 b. Diamond Bar is informed and believes, and thereon alleges,
6 that the meeting was conducted in a manner that further violated the Brown Act because
7 (i) the public was, by design, given no opportunity to provide written or oral comments on
8 the Oversight Board's ultimate action, (ii) Mr. Philips waited until all public comment had
9 been taken before making his motion to ensure that the public would not have any notice
10 or opportunity to comment and (iii) the Oversight Board sanctioned the violation by voting
11 on the motion without additional public comment or notice.

12 c. Therefore, the actions of the Oversight Board willfully violated
13 both the letter and the intent of the Brown Act.

14 191. On September 21, 2017, pursuant to Government Code Section
15 54960.1, Diamond Bar submitted a letter to the Oversight Board demanding that it correct
16 these violations of the Brown Act within 30 days of the date of the letter or face legal
17 action. The Oversight Board declined to do so.

18 192. The Oversight Board's approval of the Final Tres Hermanos PSA
19 constituted a prejudicial abuse of discretion because it violated public notice and comment
20 requirements in the Brown Act, and the Oversight Board thereby failed to proceed in the
21 manner required by law.

22 WHEREFORE, Diamond Bar prays for relief as set forth below.

23
24 **SEVENTH CAUSE OF ACTION**

25 **(Writ of Mandate – Violation of Government Code Section 37351 – Against Industry**
26 **and Industry City Council)**

27 193. Diamond Bar repeats and realleges paragraphs 1 through 154, above,
28 and incorporates them herein by this reference as though set forth in full.

1 194. Government Code Section 37351 provides in relevant part that "[t]he
2 legislative body may purchase, lease, exchange, or receive such . . . real estate situated
3 inside or outside the city limits as is necessary or proper for municipal purposes."

4 195. The City Council's approval of the \$100 Million Tres Hermanos PSA,
5 the Final Tres Hermanos PSA and the Master Lease violated Government Code Section
6 37351, as follows:

7 a. Tres Hermanos is located entirely in Diamond Bar and Chino
8 Hills, outside of Industry's geographic boundaries.

9 b. The Industry City Council approved the \$100 Million Tres
10 Hermanos PSA on January 13, 2017 and approved the Final Tres Hermanos PSA on
11 September 28, 2017.

12 c. Prior to the City Council's approval of the \$100 Million Tres
13 Hermanos PSA and the Final Tres Hermanos PSS, Industry executed the Original Master
14 Lease on May 17, 2016. The City Council subsequently approved the Master Lease on
15 October 12, 2017. The Master Lease includes the lease of Tres Hermanos to San Gabriel
16 WP for a term of 25 years and an annual rent of \$1.00 for the lease of the Total Site. If
17 Industry acquired title to Tres Hermanos, at such time San Gabriel WP would become the
18 tenant of Tres Hermanos.

19 d. Industry desires to acquire title to Tres Hermanos for the
20 purpose set forth in the Master Lease.

21 e. The Master Lease contemplates the development of the
22 Minimum Solar Project, which would generate 450 MW of electrical capacity.

23 f. According to the 2016 Cordoba Proposal, the total electrical
24 load serviced by the IPUC is 7 MW and the total electrical load for all users within
25 Industry's geographic boundaries is 165 MW.

26 g. The Minimum Solar Project of 450 MW planned under the
27 Master Lease dramatically exceeds both the IPUC's current needs of 7 MW and total
28 electrical load of 165 MW for all users within the boundaries of Industry.

1 h. The Master Lease guarantees the payment to Industry of
2 minimum net earnings of (A) at least \$2 million per year within three years after the
3 commencement of construction of the planned solar project or (B) \$4 million per year
4 within 10 years after the commencement of construction. In addition, if Industry exercised
5 its right under the Master Lease to participate in a solar project with San Gabriel WP, the
6 Master Lease provides that, in exchange for Industry funding 50% of the required capital
7 expenditures and constructing required infrastructure, Industry would receive the greater of
8 (a) the fair market rental value of the land used for the solar project plus 12% of the net
9 operating income for the solar project, (b) a 6% annual return on its contribution to the
10 project or (c) 50% of the net operating income for the project plus any net extraordinary
11 gains from the sale or refinancing of the solar project.

12 i. Therefore, the central purpose of developing the Minimum
13 Solar Project, which would generate energy far in excess of Industry's needs, is to generate
14 millions of dollars of revenue for San Gabriel WP, a private entity, Industry (which already
15 has general fund reserves of approximately \$623 million and overall reserves of
16 approximately \$1.5 billion) and their respective consultants, and therefore is not a
17 necessary or proper municipal purpose under Section 37351.

18 196. Notwithstanding Industry's execution of the Master Lease (including
19 numerous amendments) and its payment of million dollars to an array of consultants
20 retained by Industry and San Gabriel WP with regard to the planned solar project(s) under
21 the Master Lease, Industry has repeatedly denied and/or refused to acknowledge that its
22 central purpose in acquiring Tres Hermanos is to develop the Minimum Solar Project of
23 450 MW.

24 197. If the City Council actually approved the \$100 Million Tres
25 Hermanos PSA and the Final Tres Hermanos PSA with no underlying municipal purpose,
26 then the City Council's approval of those agreements violated Section 37351, as follows:

27 a. Tres Hermanos is located entirely in Diamond Bar and Chino
28 Hills, outside of Industry's geographic boundaries.

1 b. The Industry City Council approved the \$100 Million Tres
2 Hermanos PSA on January 13, 2017 and approved the Final Tres Hermanos PSA on
3 September 28, 2017.

4 c. In an effort to avoid CEQA review, and to obfuscate its actual
5 plan for Tres Hermanos, Industry has repeatedly refused to state a specific purpose for its
6 acquisition of Tres Hermanos, let alone provide any reasoning as to why the purchase is
7 for a necessary or proper municipal purpose. For example, in a September 1, 2016 letter
8 from Industry City Manager Paul Philips to Diamond Bar's Community Development
9 Director, Mr. Philips vaguely stated that it was acquiring the property "for open space,
10 preservation, public facility or other public purposes" and that "[a]t this time, the City does
11 not have any more definitive plans for the future use of Tres Hermanos." When pressed
12 for more information, and despite specific mention of the solar project contemplated under
13 the Master Lease, Mr. Phillips steadfastly refused to identify the purpose of the acquisition.

14 d. If Industry did not have an identified necessary or proper
15 municipal purpose for the acquisition of Tres Hermanos at the time the Industry City
16 Council approved it, then the approval does not comply with Section 37351.

17 198. The City Council's approval of the \$100 Million Tres Hermanos PSA,
18 the Final Tres Hermanos PSA and the Master Lease constituted prejudicial abuses of
19 discretion because those approvals violated Section 37351, in that either (a) the planned
20 solar project described in the Master Lease is not a necessary or proper municipal purpose
21 or (b) with respect to the \$100 Million Tres Hermanos PSA and the Final Tres Hermanos
22 PSA, Industry has not identified any necessary or proper municipal purpose for the
23 acquisition of Tres Hermanos, and Industry and the Industry City Council therefore failed
24 to proceed in the manner required by law.

1 WHEREFORE, Diamond Bar prays for relief as set forth below.

2
3 **EIGHTH CAUSE OF ACTION**

4 **(Writ of Mandate – Violation of Public Utilities Code Section 10004 – Against**
5 **Industry and Industry City Council)**

6 199. Diamond Bar repeats and realleges paragraphs 1 through 154, above,
7 and incorporates them herein by this reference as though set forth in full.

8 200. Public Utilities Code Section 10004 provides that, for the purpose of
9 acquiring, constructing, owning, operating, or leasing a public utility:

10 [A] municipal corporation may acquire, own, control, sell, or
11 exchange lands, easements, licenses, and rights of every nature
12 within or without its corporate limits, and may operate a public
13 utility within or without the corporate limits when necessary to
14 supply the municipality, or its inhabitants or any portion thereof,
15 with the service desired.

16 201. The Industry City Council's approval of the Master Lease violated
17 Section 10004, as follows:

18 a. Tres Hermanos is located entirely in Diamond Bar and Chino
19 Hills, outside of Industry's geographic boundaries.

20 b. Industry executed the Original Master Lease on May 17, 2016.
21 The Industry City Council subsequently approved the Master Lease on October 12, 2018.

22 c. The purpose of the Master Lease is the construction and
23 operation of a solar project, as follows:

24 i. The Master Lease contemplates that Industry and San
25 Gabriel WP would develop and San Gabriel WP and/or subtenants would operate one or
26 more solar projects on Tres Hermanos that would generate 450 MW of electrical capacity.

27 ii. In November 2016, a San Gabriel WP attorney prepared
28 the draft Power Purchase Agreement, pursuant to which SGV Solar ProjectCo 1, LLC,
which Diamond Bar is informed and believes, and thereon alleges, is affiliated with San
Gabriel WP, would (A) develop, construct, own, operate and maintain a solar photovoltaic

1 electric generation facility with a designed output of 135 MW on Tres Hermanos and (B)
2 sell the electricity produced by the solar facility to the IPUC.

3 d. The Master Lease is a sale or exchange of lands or rights of
4 every nature because (i) the Master Lease gives San Gabriel WP the right to occupy Tres
5 Hermanos for 25 years for \$1.00 in annual rent and permits San Gabriel WP to sublease
6 portions of the Total Site to subtenants for terms of up to 65 years and (ii) in exchange for
7 such lease and potential subleases and Industry's funding of a portions of the planned solar
8 projects, Industry is guaranteed to receive significant revenue from the development of
9 those solar projects.

10 e. The Minimum Solar Project of 450 MW contemplated under
11 the Master Lease would generate energy far in excess of that required to supply Industry or
12 its inhabitants or any portion thereof with electrical service, as follows:

13 i. The Master Lease contemplates a Minimum Solar
14 Project that would generate 450 MW of electrical capacity.

15 ii. According to the 2016 Cordoba Proposal, the total
16 electrical load serviced by the IPUC is 7 MW and the total electrical load for all users
17 within Industry's geographic boundaries is 165 MW.

18 iii. Therefore, the Minimum Solar Project of 450 MW
19 planned under the Master Lease dramatically exceeds both the IPUC's current needs of
20 7 MW and total electrical load of 165 MW for all users within the boundaries of Industry.

21 202. Industry's and the City Council's approval of the \$100 Million Tres
22 Hermanos PSA and the Final Tres Hermanos PSA violated Section 10004, as follows:

23 a. Tres Hermanos is located entirely in Diamond Bar and Chino
24 Hills, outside of Industry's geographic boundaries.

25 b. The City Council approved the \$100 Million Tres Hermanos
26 PSA on January 13, 2017 and approved the Final Tres Hermanos PSA on September 28,
27 2017.

1 c. Prior to the City Council's approval of the \$100 Million Tres
2 Hermanos PSA and the Final Tres Hermanos PSS, Industry executed the Original Master
3 Lease on May 17, 2016. The City Council subsequently approved the Master Lease on
4 October 12, 2018. The Master Lease includes the lease of Tres Hermanos to San Gabriel
5 WP for a term of 25 years and an annual rent of \$1.00 for the lease of the Total Site. If
6 Industry acquired title to Tres Hermanos, at such time San Gabriel would become the
7 tenant of Tres Hermanos.

8 d. The \$100 Million Tres Hermanos PSA and the Final Tres
9 Hermanos PSA involve Industry's acquisition of Tres Hermanos.

10 e. Industry desires to acquire title to Tres Hermanos for the
11 purpose set forth in the Master Lease.

12 f. The purpose of the Master Lease is the construction and
13 operation of a public utility, as follows:

14 i. The Master Lease contemplates that Industry and San
15 Gabriel WP would develop and San Gabriel WP and/or subtenants would operate one or
16 more solar projects on Tres Hermanos that would generate 450 MW of electrical capacity.

17 ii. The draft Power Purchase Agreement contemplates that
18 SGV Solar ProjectCo 1, LLC, which Diamond Bar is informed and believes, and thereon
19 alleges, is affiliated with San Gabriel WP, would (i) develop, construct, own, operate and
20 maintain a solar photovoltaic electric generation facility with a designed output of 135
21 MW on Tres Hermanos and (ii) sell the electricity produced by the solar facility to the
22 IPUC.

23 g. The Minimum Solar Project of 450 MW contemplated under
24 the Master Lease would generate energy far in excess of that required to supply Industry or
25 its inhabitants or any portion thereof with electrical service, as follows:

26 i. The Master Lease contemplates a Minimum Solar
27 Project that would generate 450 MW of electrical capacity.

1 ii. According to the 2016 Cordoba Proposal, the total
2 electrical load serviced by the IPUC is 7 MW and the total electrical load for all users
3 within Industry's geographic boundaries is 165 MW.

4 iii. Therefore, the Minimum Solar Project of 450 MW
5 planned under the Master Lease dramatically exceeds both the IPUC's current needs of
6 7 MW and total electrical load of 165 MW for all users within the boundaries of Industry.

7 203. The Industry City Council's approval of the Master Lease, the \$100
8 Million Tres Hermanos PSA and the Final Tres Hermanos PSA constituted prejudicial
9 abuses because those approvals violated Section 10004, in that (a) they all involve the
10 acquisition, sale or exchange of lands or rights of every nature for the purpose of
11 constructing, owning, operating or leasing a public utility, (b) the planned solar projects
12 described in the Master Lease and other documents would produce energy that is far more
13 than necessary to supply Industry or its inhabitants or any portion thereof with electrical
14 service, and Industry and the Industry City Council therefore failed to proceed in the
15 manner required by law.

16 WHEREFORE, Diamond Bar prays for relief as set forth below.

17
18 **ON ALL CAUSES OF ACTION**

19 1. Issue a peremptory writ of mandate:

20 a. ordering that (i) the Industry City Council set aside its approval
21 of the \$100 Million Tres Hermanos PSA, (ii) the City Council, the Successor Agency
22 Board and the Oversight Board set aside their approvals of the Final Tres Hermanos PSA,
23 (iii) the City Council set aside its approval of the Master Lease and (iv) Industry, the City
24 Council, the Successor Agency, the Successor Agency Board and the Oversight Board set
25 aside all other permits, approvals, contracts, resolutions, letters, ordinances, certifications
26 and other documents and actions approved, issued, granted, adopted, certified, executed or
27 taken by Industry, the City Council, the Successor Agency, the Successor Agency Board
28

1 and the Oversight Board with respect to the purchase, sale, lease or other transfer of any
2 portion of Tres Hermanos; and

3 b. enjoining Industry, the City Council, the Successor Agency,
4 the Successor Agency Board and the Oversight Board from approving, issuing, granting,
5 adopting, executing or taking any further permits, approvals, contracts, resolutions, letters,
6 ordinances, certifications or other documents or actions relating to the purchase, sale,
7 lease or other transfer of any portion of Tres Hermanos until they have taken such actions
8 as may be necessary to comply fully with the requirements of CEQA and the Guidelines,
9 Government Code Section 65402(b), Article XVI, Section 6 of the California Constitution
10 and the Brown Act.

11 2. Issue an order immediately enjoining (a) the effectiveness of any and
12 all permits, approvals, contracts, resolutions, letters, ordinances, certifications and other
13 documents and actions approved, issued, granted, adopted, certified, executed or taken by
14 Industry, the City Council, the Successor Agency, the Successor Agency Board and the
15 Oversight Board relating to the purchase, sale, lease or other transfer of any portion of Tres
16 Hermanos, including without limitation (i) the City Council's approval of the \$100 Million
17 Tres Hermanos PSA, (ii) the approval of the Final Tres Hermanos PSA by the City
18 Council, the Successor Agency Board and the Oversight Board and (iii) the City Council's
19 approval of the Master Lease, and (b) Industry, the City Council, the Successor Agency,
20 the Successor Agency Board and the Oversight Board from approving, issuing, granting,
21 adopting, certifying, executing or taking any further permits, approvals, contracts,
22 resolutions, letters, ordinances, certifications or other documents or actions relating to the
23 purchase, sale, lease or other transfer of any portion of Tres Hermanos, all pending a final
24 adjudication of this Petition.

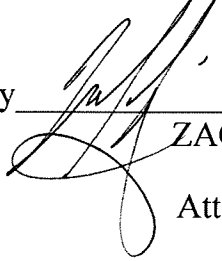
25 3. Enter an order awarding Diamond Bar its reasonable attorneys' fees,
26 interest and costs incurred in this action pursuant to Section 1021.5 of the California Code
27 of Civil Procedure and all other applicable laws.

1 4. For such other and further relief as the Court deems just and proper.
2

3 Dated: February 13, 2018

4 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
5 JACK H. RUBENS
6 ZACHARY M. NORRIS
7 LAUREN K. CHANG

8 By



9 ZACHARY M. NORRIS

10 Attorneys for Petitioner
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VERIFICATION

1. I, Dan Fox, declare as follows:

2. I am the City Manager of City of Diamond Bar, the petitioner in this action. I have read the foregoing First Amended Verified Petition for Peremptory Writ of Mandate and know its contents. The facts alleged in the First Amended Verified Petition for Peremptory Writ of Mandate are true of my own knowledge and belief, except as to those matters alleged on information and belief, and as to those matters I believe them to be true.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4. Executed this 7th day of February, 2018, at Diamond Bar, California.



DAN FOX

EXHIBIT 1

EXHIBIT 1



Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street 43rd Floor
Los Angeles, California 90071-1422
213.620 1780 main
213 620 1398 fax
www.sheppardmullin.com

Jack H. Rubens
213.617.4216 direct
jrubens@sheppardmullin.com

October 31, 2017

BY U.S. MAIL

City of Industry
City of Industry City Council
Office of the City Clerk
15625 East Stafford Street
City of Industry, California 91744
Attention: Ms. Diane Schlichting,
Chief Deputy City Clerk

Oversight Board of the Successor Agency to
the Industry Urban-Development Agency,
Successor Agency to the Industry Urban-
Development Agency, and Board of Directors
of the Successor Agency to the Industry
Urban-Development Agency
15625 East Stafford Street
City of Industry, California 91744
Attention: Ms. Diane Schlichting,
Secretary

Re: Notice of Commencement of City of Diamond Bar v. City of Industry, et al.

Dear Ms. Schlichting:

Pursuant to Section 21167.5 of the California Public Resources Code, this letter provides written notice of the intent of petitioner City of Diamond Bar ("Petitioner") to commence the above-referenced action on or about November 1, 2017 in the Superior Court of the State of California for the County of Los Angeles, Central District, which action will include causes of action challenging all permits, approvals, contracts, resolutions, letters, ordinances, certifications and other documents and actions approved, issued, granted, adopted, certified, executed or taken by the City of Industry ("Industry"), the City of Industry City Council (the "City Council"), the Successor Agency to the Industry Urban-Development Agency, the Board of Directors of the Successor Agency to the Industry Urban-Development Agency (the "Successor Agency Board") and the Oversight Board of the Successor Agency to the Industry Urban-Development Agency (the "Oversight Board" and, collectively with the preceding entities, "Respondents"), relating to the contemplated sale and development of the Tres Hermanos Ranch ("Tres Hermanos"), including without limitation (1) the City Council's approval of that certain Master Ground Lease dated as of May 17, 2016, by and between Industry, as landlord, and San Gabriel Valley Water and Power, LLC ("San Gabriel WP"), as tenant, pursuant to which Industry has purported to lease to San Gabriel WP certain real property, including Tres Hermanos, for the development of solar projects (as amended, the "Master Lease"), and (2) the approval by the City Council, the Successor Agency Board and the Oversight Board of Directors of that certain Purchase and Sale Agreement and Joint Escrow Instructions – Tres Hermanos Ranch, by and between the Successor Agency, as seller, and Industry, as buyer, pursuant to which Industry would acquire Tres Hermanos for the sum of \$41.65 million (the "Final Tres Hermanos PSA").

SheppardMullin

City of Industry, et al.
October 31, 2017
Page 2

This action will be based in part on the failure of Industry, the Successor Agency and the Oversight Board to carry out environmental review under the California Environmental Quality Act ("CEQA") with respect to the Master Lease and the Final Tres Hermanos PSA prior to their approval by the City Council, the Successor Agency Board and the Oversight Board.

The action will seek a peremptory writ of mandate to set aside the Master Lease and the Final Tres Hermanos PSA and enjoin Respondents from taking any further actions relating to the sale or lease of Tres Hermanos until Respondents have taken such actions as may be necessary to comply with the requirements of CEQA.

Petitioner will also seek as recovery the costs of the suit and attorneys' fees pursuant to Section 1021.5 of the California Code of Civil Procedure and other applicable laws.

Very truly yours,



Jack H. Rubens
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:484583106.2

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Los Angeles, State of California. My business address is 333 South
5 Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

6 On October 31, 2017, I served true copies of the following document(s) described as:
7 **NOTICE OF COMMENCEMENT OF ACTION** on the interested parties in this action as
8 follows:

9 **City of Industry**

10 City Clerk of the City of Industry
11 Attn: Diane Schlichting, Chief Deputy City Clerk
12 15625 East Stafford Street
13 City of Industry, CA 91744

14 **City of Industry City Council**

15 City Clerk of the City of Industry
16 Attn: Diane Schlichting, Chief Deputy City Clerk
17 15625 East Stafford Street
18 City of Industry, CA 91744

19 **Successor Agency to the Industry**

20 **Urban-Development Agency**
21 Diane Schlichting, Secretary
22 15625 East Stafford Street
23 City of Industry, CA 91744

24 **Board of Directors of the Successor Agency to**
25 **the Industry Urban-Development Agency**

26 Diane Schlichting, Secretary
27 15625 East Stafford Street
28 City of Industry, CA 91744

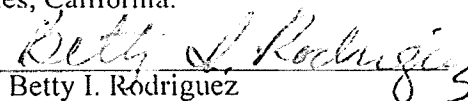
Oversight Board of the Successor Agency to
the Industry Urban-Development Agency

Diane Schlichting, Secretary
15625 East Stafford Street
City of Industry, CA 91744

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the
persons at the addresses listed in the Service List and placed the envelope for collection and
mailing, following our ordinary business practices. I am readily familiar with the firm's practice
for collecting and processing correspondence for mailing. On the same day that correspondence is
placed for collection and mailing, it is deposited in the ordinary course of business with the United
States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed
in the county where the mailing occurred.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on October 31, 2017, at Los Angeles, California.


Betty I. Rodríguez

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I
4 am employed in the County of Los Angeles, State of California. My business address is
333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

5 On February 13, 2018, I served true copies of the following document(s) described
6 as: **FIRST AMENDED VERIFIED PETITION FOR PEREMPTORY WRIT OF
MANDATE**, on the interested parties in this action as follows:

7 **City of Industry**

James Casso and Bianca Sparks
8 Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
9 City of Industry, CA 91746

10 **City of Industry City Council**

James Casso and Bianca Sparks
11 Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
12 City of Industry, CA 91746

13 **Oversight Board of the Successor Agency to
the Industry Urban-Development Agency**

14 Suzanne Bryant
Varner & Brandt LLP
15 3750 University Avenue, Sixth Floor
Riverside, CA 92501

16 **Successor Agency to the Industry
Urban-Development Agency**

17 James Casso and Bianca Sparks
18 Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
19 City of Industry, CA 91746

20 **Board of Directors of the Successor Agency to
the Industry Urban-Development Agency**

21 James Casso and Bianca Sparks
Casso & Sparks, LLP
22 13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

23 **San Gabriel Valley Water and Power, LLC**

24 Christian Marsh
Downey Brand
25 455 Market Street, Suite 1500
San Francisco, CA 94105

26 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed
27 to the persons at the addresses listed in the Service List and placed the envelope for
collection and mailing, following our ordinary business practices. I am readily familiar
28 with the firm's practice for collecting and processing correspondence for mailing. On the

1 same day that correspondence is placed for collection and mailing, it is deposited in the
2 ordinary course of business with the United States Postal Service, in a sealed envelope
3 with postage fully prepaid. I am a resident or employed in the county where the mailing
4 occurred.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 Executed on February 13, 2018, at Los Angeles, California.

8 
9 REGINA GORDON